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Home rule charter of the City of New Yor



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with who.

Home Rule Charter

for

The City of New York

With Explanatory Memorandum



Proposed to the

New York Charter Commission

by

FRANKLIN W. M. CUTCHEON

Counsel to the Commission



NEW YORK CHARTER COMMISSION

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FRANKLIN W. M. CUTCHEON, Counsel



Suggestions for piecemeal legial.

- 1) Powers of City. art. II. No, because of utilities
- 2) Powers of Bd. of Est. Yes.

Giving power to mays. art. IX. p. 26.

- 3) ~~Sanitary~~ Tax dept. Powers of Bd. of Law. art. X

- 4) Tax articles.

XXII. XXVI XXX

- 5) Dept. of Pensions.

Some at least of above.



HOME RULE CHARTER

FOR

THE CITY OF NEW YORK

PREAMBLE

The People of the State of New York, represented in Senate and Assembly, Do Enact as follows:

ARTICLE I

Short Title

This act shall be known and may be cited as the "Home Rule Charter of The City of New York."

ARTICLE II

Corporate Status and Rights

The City of New York as heretofore constituted shall continue to be a body politic and corporate having a common seal and perpetual succession, with all of the grants, rights, properties, estates, interests, claims, demands, powers, functions, privileges and jurisdictions heretofore held or exercised by it.

The grants of franchises, properties, estates, interests, privileges, rights of any nature, and all other grants made by the Nicolls Charter, the Dongan Charter, the Cornbury Charter, the Montgomerie Charter, by the confirmatory act passed the 14th day of October, 1732, and by any other charter or act made by the State of New York or any of its predecessors in sovereignty to any of the municipalities or public corporations heretofore united and consolidated into The City of New York as heretofore constituted by Chapter 378 of the Laws of 1897, entitled "An Act to Unite into one Municipality under the corporate name of The City of New York the various communities lying in and about New York Harbor, including the City and County of New York, the City of Brooklyn and the County of Kings, the County of Richmond, and part of the County of Queens, and to provide

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for the government thereof," as amended by Chapter 466 of the laws of 1901 and as amended from time to time and last amended by Chapter ... of the Laws of ..., are, and each of them is, hereby ratified and confirmed in and to the said The City of New York.

ARTICLE III

Boundaries and Boroughs

The boundaries of The City of New York shall remain as at present established, and The City of New York shall continue to be divided into five boroughs to be designated respectively: Manhattan, The Bronx, Brooklyn, Queens and Richmond; the boundaries whereof shall be as follows:

First: The Borough of Manhattan shall consist of all that portion of The City of New York, as now constituted, known as Manhattan Island, Nuttin or Governor's Island, Bedloe's Island, Bucking or Ellis Island, the Oyster Islands, and also Blackwell's Island, Randall's Island, and Ward's Island in the East or Harlem Rivers.

Second: The Borough of The Bronx shall consist of all that portion of The City of New York, as now constituted, lying northerly or easterly of the Borough of Manhattan, between the Hudson River and the East River or Long Island Sound, including the several islands belonging to the municipal corporation heretofore known as The Mayor, Aldermen and Commonalty of the City of New York, not included in the Borough of Manhattan.

Third: The Borough of Brooklyn shall consist of the territory known as Kings County.

Fourth: The Borough of Queens shall consist of the territory known as Queens County.

Fifth: The Borough of Richmond shall consist of the territory known as Richmond County.

ARTICLE IV

Powers

Subject to the limitations and conditions in this act, in the constitution of the State of New York and in the constitution of the United States of America prescribed, The City of New York shall possess, and it is hereby authorized

to exercise in any and every appropriate manner, all and every power, authority and jurisdiction requisite to regulate, manage and control its property and to administer the government of the City and its inhabitants with respect to all municipal and local matters and affairs, including, among others, power to enforce the laws and punish violations thereof, maintain order, protect property, suppress vice, abate nuisances, enforce honest dealing, and preserve and care for the safety, health, comfort and general welfare of the inhabitants of the City and sojourners therein, and as well any and every power of the several boards of the Supervisors of counties comprised in the City which heretofore have been vested in any of the officers, boards, departments, commissions or other authorities of the City; and in furtherance of the aforesaid grants and powers, but not in derogation or restriction thereof, except as expressly provided, nor to the exclusion of any power not enumerated. The City of New York is expressly authorized and empowered:

1. To make ordinances consistent with this act, to execute or provide for the execution of, or give effect to, all or any of the powers of the City, and to provide for the enforcement and the restraint by legal proceedings appropriate to compel compliance therewith of the violation of ordinances as well as to prescribe penalties, forfeitures and imprisonments to punish violations thereof.

2. To classify and determine the valuation of and to assess private property within the City for purposes of taxation; to levy taxes, which in the reasonable discretion of the City may be levied at differing rates upon different classes of property, and in particular to assess and levy taxes upon improvements on land upon a basis of assessment or at a rate different from the basis or rate employed with respect to the land itself; as justice may require to add to and omit from assessment rolls property erroneously omitted therefrom or included therein; to correct assessments and abate or remit taxes on real or personal property; to assess and levy taxes upon businesses and occupations conducted in the City; to collect and enforce the payment of and to compromise taxes; to determine the date as of which any tax shall become a lien upon property; to enforce such liens by the sale thereof or otherwise; to

reduce and discharge liens; to allow rebates upon taxes paid in advance of due dates and to charge and collect interest and penalties with respect to deferred instalments or delinquent payments.

3. To determine whether any, and if so how much, of the cost of any public or local improvement, including, among others, public works and facilities, shall be borne by the City as a whole, and unless the whole thereof is to be so borne by the City, to apportion the cost thereof, as may be just and reasonable, among the boroughs of the City or to allocate the same, in whole or in part to any particular borough or boroughs, or any part or parts of any thereof; to determine whether the cost of any thereof in whole or in part, and if in part what portion thereof, shall be assessed and levied upon private property benefited thereby; provided, however, that no part of the cost of (a) any public building or (b) of any revenue-producing improvement, the estimated annual earnings whereof shall equal or exceed the estimated annual operating expense thereof, as defined in Subdivision 19 of this Article (such estimated earnings and operating expense being ascertained as provided in Section 2 of Article IX), shall be assessed upon private property; to make awards and payments in consideration of the taking or destruction of or injury to property or rights or interests in property occasioned by any such improvement; if it be determined so to do, to make assessments of all or any part of the cost of any such improvement (with the exceptions aforesaid) upon private property deemed to be benefited thereby; to collect, enforce payment of, correct, compromise, reduce or discharge such assessments; to provide for the payment of assessments of City property for purposes of local improvement; to determine the dates upon which liens upon property to secure payment of assessments shall become effective; to enforce such liens by sale or otherwise and to reduce and release the same; but no assessment of benefits for a local improvement shall ever exceed fifty per cent of the value of the property assessed after such improvement; to subdivide the City and its boroughs into local improvement districts; to create and define the powers and functions of local improvement boards.

4. To determine, consistently with and in execution of the provisions of this Act, the procedure for the assessment,

reassessment, levy, abatement, remission and for the collection, in instalments or otherwise, with or without abatements, interest or penalties, of taxes and of assessments for local improvements and for the creation, enforcement, reduction and release of liens upon property to secure payment of the same and for the review of such assessments and taxes at the instance of property owners aggrieved thereby.

5. To appropriate and apply moneys to any municipal or local public purpose, whether specifically or by appropriation in gross for the expenditures of any department, bureau, board, commission, corporation or office or for the accomplishment of a specified object, and to revoke any appropriation or in whole or in part to transfer an appropriation already made from one purpose or object to another; to provide for the manner of and to regulate the keeping and auditing of accounts; to establish, maintain and provide against the depletion of street-opening, improvement, administrative and reserve funds and accounts.

6. To contract and be contracted with, under seal or otherwise; to institute, maintain, defend, appeal, discontinue and otherwise control on its own behalf or as trustee for its inhabitants, any action or proceeding in any court and to compromise and settle controversies.

7. For any public or municipal purpose, to determine the necessity for and to purchase, acquire by condemnation or otherwise acquire real property within or without the limits of the City; to take by cession, gift, grant, devise or bequest, absolutely or in trust for any public or municipal purpose, or by lease, real and personal property within or without the limits of the City; in connection with the acquisition of land for any park, highway, street or other public place, and as a part of the same transaction or proceeding, to acquire in fee, by purchase, condemnation or otherwise, lands additional to those required for such purpose but suitable for building sites to abut upon such park, highway, street or other public place or upon already existing and directly intervening streets upon which any such park or public place also shall abut; to cede to the State of New York or to the United States of America any property of the City or interests or rights in or with respect to the same.

8. To determine the necessity for and nature and location of and to authorize, construct, lease or acquire by gift,

devise, bequest, purchase, and consistently with the Conservation Law of the State by condemnation, (a) improvements of navigation and facilities of water-borne commerce, including among others boats, docks, piers, wharves and warehouses, (b) public works and facilities and property, real or personal, and interests in and rights and easements with respect to property required for use in connection therewith, whether any of said works, facilities or properties be within or without the limits of the City, for supplying itself and the inhabitants and industries within its exterior limits with water, light, power, heat, transportation of persons and property (whether by land or water), telephones, telegraphs and other means of communication, markets and market facilities, garbage and sewage-disposal plants and also other services, facilities and articles of common necessity, and (c) other public improvements of every *thing* - description, including local improvements; peaceably to enter upon private property for the purpose of making surveys and maps for or in connection with public or local improvements; to safeguard, make regulations with respect to and acquire property, interests or rights for the protection of the safe, sanitary, efficient and convenient operation of any such improvements, works, facilities or properties; to provide itself with any of the services, facilities or articles above-mentioned by contract with public or private corporations or with individuals.

9. To determine the necessity for and the nature and location of and to authorize, acquire sites for, construct or lease and to equip and maintain, within the City, public or municipal buildings (including, among others, buildings wherein to conduct the government and business of the City, court-houses and court-rooms, armories, drill-halls, police-stations, fire-houses, prisons, jails and other correctional institutions, hospitals, sanatoria, clinics, dispensaries, day-nurseries, public baths, lodging houses, alms-houses, work-houses, reformatories and buildings for other charitable institutions maintained by the City).

10. To determine the necessity for and to establish and maintain, or assist to maintain within the City, provide for the management of and regulate schools, academies, colleges, technical and vocational institutions, libraries, museums, art-galleries, and such other institutions and instrumentali-

ties for the instruction, enlightenment, improvement, entertainment, recreation and welfare of its inhabitants as shall be deemed appropriate or necessary for the public interest or advantage; to determine the necessity for and the location of, and to authorize, construct, equip and maintain buildings and other facilities for the purposes thereof or to provide sites therefor.

11. To hold and otherwise manage and deal with real and personal property of the City within and without the limits of the City; to fix the date as of which title to property or any interest therein condemned at the instance of the City shall vest in the City and the time for the payment of or in connection with any such condemnation or the making of any public or local improvement; to operate and conduct all public or municipal works and facilities, businesses and enterprises which the City shall be empowered to operate or conduct; to fix the rates or prices to be charged for and to restrict and impose conditions upon the enjoyment or use of any or all of services, facilities and commodities provided by the City; to provide for and regulate the custody and care of City property; to provide accommodations and supplies for any of the courts of the State or City or any of the Counties therein held within the City and accommodations for and the maintenance of jurors serving therein; to take out or acquire patents and patent rights and copyrights; to sell and convey (if no longer required for any public purpose), or to lease for a term of years not exceeding ten years, or to grant permits for the temporary use of, any of the property of the City or interests or rights or easements in or with respect to the same; to exchange for other property and to devote to other public or municipal use any property of the City determined to be no longer required for the purpose for which it was acquired or had been used; to prescribe the compensation to be paid for and the terms of, and to regulate, the use of property of the City by the public or by private corporations or individuals; to maintain, operate, control, regulate the use of, alter and discontinue improvements of navigation and facilities of water-borne commerce (including among others boats, docks, piers, wharves and warehouses); to establish highwater, bulkhead and pierhead lines, and to restrict,

regulate and control the water-front of the City and the improvement, filling in and use thereof; generally to exercise all of the powers and dominion of ownership thereover; but the rights of the City in and to its water-front, wharf property, public landings, wharves, docks, land under water, streets, avenues, parks, play-grounds and all other public places, whether now owned or hereafter acquired, are hereby declared to be inalienable, except (1) streets, parks and other public places which shall have been closed or discontinued and (2) that a sale to or exchange with an upland owner for other lands may be made of lands under water inside the highwater mark when established by the City in front of the property of said upland owner, and (3) that the City's interest in a public easement in or with respect to real estate, if the same amount merely to a cloud thereon, may be released, with or without compensation.

12. To make and change the map or a plan of the City and of each borough therein; to take measures to insure its execution in the future; to survey, mark and establish the boundaries of the City and its several boroughs; to lay out, name, open, establish, construct, maintain, ornament, repair, permit excavations and installations in or under, alter as to location, grade or construction, discontinue, restrict and regulate the use of highways, streets, avenues, court-yards, parks, playgrounds, recreation-piers, bridges, tunnels, viaducts, approaches to any thereof, other public places of all descriptions, and sewers and drainage canals and systems, and upon the discontinuance of any thereof to sell and convey any or all property, or interest in property, whether real or personal, which shall be deemed to be no longer required by the City; to make and perform agreements with the authorized public authorities of any other municipality, any county or other political subdivision or public corporation or body having or representing an interest in any extension thereof outside of the City, for the construction, acquisition, discontinuance, demolition or disposition of any of the foregoing or of any extension thereof outside of the City.

13. To inspect and subject to the provisions in Section 1 of Article IX contained, to regulate the height and bulk of buildings and the area of yards, courts and other open spaces and to regulate and restrict the location of trades and industries, and the location of buildings designed for

particular uses or classes of uses and to establish such classifications, districts and zones. All such regulations and restrictions shall be reasonably designed to promote the public safety, health and welfare and be made with due regard to the preservation of property values, and, with respect to particular zones, districts or areas shall be uniform as to each class of building and business.

14. To establish, consolidate, abolish and discontinue and to define the powers, duties and relations of any or all offices, boards, divisions, departments, bureaus or commissions, and branches thereof, for carrying on the public business and for administering the government of the City, the boroughs thereof and the counties therein; to transfer any of the powers or duties of any of the foregoing or of any other of the municipal or county authorities to any of the other offices, boards, divisions, departments, bureaus, commissions or other municipal or county authorities, whether the office or other authority from which or to which the same may be so transferred be that of the City or of any county or of any borough therein; provided, however, that none of the following offices, boards, departments or commissions shall be abolished, nor shall any thereof or any of the chief executive officers thereof be deprived of any of the powers which are conferred upon them respectively by this Act, except such as are by the terms hereof expressly declared to be subject to the exercise by the Board of Aldermen or the Board of Estimate and Apportionment or both thereof of the power so to do, viz.: the Board of Aldermen, the Board of Estimate and Apportionment, the Law Department, the Police Department, the Department of Pensions, the Department of Taxes, the Board of Review, and the Municipal Civil Service Commission; courts and the judges thereof; the offices of sheriff, county clerk, district attorney, corporation counsel, police commissioner, civil service commissioner and of the elective officers of the City (except that any or all of the powers and duties of Borough Presidents enumerated in Section 3 of Article XV may be transferred as above provided); to provide for the selection and employment of counsel and expert or technical advisers in special matters; generally, to regulate the administrative organization of the city, the borough and county governments and the manner of supervising, transacting and

reporting with respect to the business of the City and the boroughs and counties therein.

15. Subject to and consistently with the Constitution of the State and the Civil Service Law, but irrespective of any other law of this State, general or special, to determine and regulate the number, terms of office or employment, qualifications, methods of selection and removal, discipline of, and the security, if any, to be required from, any or all officers, members of administrative boards and bodies, and employees of the City or of any of the boroughs or counties therein, not including, however, judges, surrogates and district attorneys, but not excepting officers, appointees or attaches of courts or surrogates, nor assistants to or other subordinates of district attorneys; to fix the compensation of all such persons except judges, surrogates and district attorneys, provided that the compensation of any elective officer whatsoever shall not be changed in such manner as to affect the compensation of an incumbent during his then unexpired term of office; to require and provide that appropriations by the City for the support of any or all corporations maintained wholly or in part by the City shall be conditioned upon its right during the period of such support to exercise such powers, or any of them, with respect of all persons rendering service thereto and to enforce the conditions so imposed.

16. To grant franchises, for not exceeding twenty-five years, or indeterminate franchises to be terminable by the City at such time or times, but not less frequently than at the end of every twenty-five years, and upon such terms as shall be specified in the grants thereof, respectively, but upon such terms and conditions otherwise as the proper authorities of the City may prescribe, and also revocable permits to use, any of the highways, streets, avenues, boulevards, concourses, driveways, parks, parkways, bridges, viaducts, waterways, docks, bulkheads, wharves, piers, and any other public grounds or waters or lands under water, belonging to or under the control of the City, but only in the manner and upon the conditions in Section 1 of Article IX prescribed.

17. Subject to and consistently with the laws of the State or of the United States, whether heretofore or here-

after enacted as the same from time to time shall exist and be applicable within the City, to determine the necessity for and prescribe reasonable rules, regulations and rates of charges for services to be rendered and commodities furnished within The City of New York by any corporation or person exercising a franchise or right under license to maintain any structures, facilities or instrumentalities, or to carry on any undertaking or business, upon, over, along, across or under the surface of any of the streets, parks, waterfront, water or public places or property of the City, but not with respect to any business or enterprise the regulation whereof shall be provided for by any law of the State of New York or of the United States, whether heretofore or hereafter enacted, which shall be applicable within the City, nor with respect to any matter or subject the regulation whereof shall have been so provided for; to prescribe the manner and location in which any property or instrumentalities used or designed to be used in or in aid of the exercise of any such franchise or license shall be constructed, maintained or used from time to time, and, among other things, to require pipes, wires and conductors of all descriptions to be placed underground or under water.

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18. Upon the conditions prescribed in Article X, to engage in any description of business or enterprise within the City which may be engaged in by any person, firm or corporation in the City by virtue of any franchise heretofore or hereafter granted by or under the authority of the State of New York, The City of New York, or any of the municipalities consolidated therein to the conduct whereof such franchise is or would be essential if carried on by a private individual or corporation, and in any business or enterprise for the supply to the City of materials or supplies consumed by it or for the repair thereof or the supply to the inhabitants of the City of any service or commodity of common necessity.

p. 35.

19. To borrow money for any municipal purpose and to issue its obligations in the form of corporate stock, serial bonds, or of short term bonds, notes or certificates; to issue interim certificates or obligations temporarily to represent any of the foregoing; to issue any of the foregoing upon such terms with respect to interest, maturity, currencies and places of repayment and otherwise, as the proper authori-

ties of the City may determine; to pledge its faith and credit for the repayment thereof; to repay the same at, or when it shall possess the right so to do before, maturity; to maintain existing sinking funds for the amortization and the redemption at maturity of the City's existing funded debt and to establish and maintain sinking funds for the amortization and redemption of such amounts thereof, annually during the life of any issue of corporate stock or bonds hereafter issued, as will be sufficient to effect the redemption of the entire issue at or before maturity, but no pledge of or agreement to apply specified revenues of the City to the service of any such sinking fund or funds hereafter established shall be made; provided, however, that no obligation of the City shall be issued for a term longer than the estimated life of the improvement to be financed thereby nor in any case for more than fifty years; nor for any non-revenue producing improvement, except (1) those heretofore authorized to the extent that such authority has not been exercised; (2) for the acquisition of sites and buildings for school purposes and the construction, furnishing and equipment of new schools; (3) assessment bonds maturing in not more than ten years in anticipation of the collection of assessments levied or to be levied for local improvements theretofore authorized; (4) General Fund Bonds and (5) bonds issued to refund maturing obligations; such exceptions being subject, however, to the limitations in other respects in this subdivision contained; nor shall money be borrowed to meet the current expenses of the City or any County therein except in anticipation of the collection of taxes already levied or to be levied in the next ensuing year, in the last-mentioned case to an amount not exceeding one-twentieth of 1 per cent of the assessed valuation of the real estate of the City subject to taxation as it appears by the assessment rolls of the City on the last preceding assessment for taxes upon which a completed levy shall have been made. Deficits arising from the operation of any business or enterprise or public improvement, works or facility carried on, operated, or maintained by the City shall be deemed to be current expenses of the City.

Prior to the authorization of the issue of corporate stock or bonds, there shall be determined, as in this Act provided,

(1) the estimated life and duration of the improvement to be financed thereby and, if revenue producing, (2) the estimated cost and the amount estimated to be required to provide for the financing of such improvement, (3) the estimated average annual earnings, and (4) the average annual operating expense thereof. The term "operating expense" shall be deemed to mean and comprehend, unless the contrary be expressly stated, (a) all expenses of operation, (b) ordinary maintenance, (c) the average annual amount of all other expenses and charges to which the City may be subject which upon approved accounting principles would be included in the case of a similar private enterprise, (d) the amount necessary to be paid annually in order to amortize the entire estimated investment in the improvement in equal annual installments during its estimated life which shall not be deemed to exceed fifty years, and (e) the amount of the average annual interest charge upon the investment, such interest being calculated thereon at not less than the rate to be borne by the corporate stock or bonds to be issued for the purpose of financing such improvement; corporate stock or serial bonds may be issued to finance such improvement up to the amount, not exceeding the amount estimated to be required to provide for the financing of such improvement, upon which the estimated average annual earnings thereof will suffice to provide for interest, after provision for all other such operating expense, at the rate to be borne by the corporate stock or bonds to be issued therefor.

Such provision, by way of serial maturities, shall be made at the time of the authorization of any issue of corporate bonds hereafter made, which shall not be in anticipation of the collection of taxes or shall not mature within two years from the date of issue, unless a sinking fund to provide therefor shall be established as hereinabove authorized, as will operate to retire the entire issue, in practicable annual instalments, at or prior to maturity. No obligations of the City save only revenue bonds payable out of the tax-levy of the current year, shall be issued in substitution for or for the purpose of refunding (a) any debt hereafter contracted or (b) any debt heretofore contracted for any purpose for which corporate stock or bonds could not have been issued in the first instance as provided in this Act, at the

date of such new issue or refunding. In the event that corporate stock or serial bonds shall be issued to refund any portion or portions of the funded debt of the City now existing the same shall be of a principal amount not exceeding the principal amount of the particular debt or debts refunded; such new corporate stock or bonds shall run for a term not exceeding fifty years and the provisions of this Act with respect to maturities and provision for the payment and retirement of corporate stock or bonds hereafter to be issued shall apply to and control the issue, service and payment of all such refunding obligations.

X Notwithstanding anything in this Subdivision 19 contained, bonds known as "General Fund Bonds" to mature in 1929 may be issued annually to the Board of Estimate and Apportionment for the account of the sinking fund known as "The Sinking Fund of the City of New York for the Redemption of the City debt" to an amount equal to the surplus revenues and accumulations in such sinking fund as determined by the Board of Estimate and Apportionment over and above the amount required to pay at maturity the bonds and stocks of the City of New York redeemable therefrom; but none of the revenues, moneys or securities belonging to any sinking fund, whether existing or hereafter established, shall hereafter be invested in, exchanged for, or replaced by General Fund Bonds or by any obligations of the City, unless after such investment, exchange or replacement there shall remain in such sinking fund moneys and sound securities of the United States and of states, counties and municipalities therein and of corporations in which by general law trust funds may lawfully be invested, or of some thereof, sufficient, being taken at their then fair market value, together with the income to accrue thereon during the life of the issue of obligations secured by such sinking fund, to provide for the extinguishment at maturity of the entire issue of obligations so secured, principal and interest. The proceeds of all General Fund Bonds issued as aforesaid shall be credited to the "General Fund for the Reduction of Taxation" or such fund or account of like nature as may be maintained by the City, unless applied to the payment or redemption of the City's funded debt. When all of the bonds and stocks redeemable from "The Sinking Fund of the City of New York for the Redemption of the City Debt" shall have

been paid, all of the General Fund Bonds then held in said sinking fund shall be cancelled.

20. To establish and maintain a system or systems of pensions or annuities for retirement of any or all of the officers and employees of the City and the counties contained therein and of offices, boards, bodies, commissions and corporations, maintained wholly or in part by appropriations made by the City; to provide, in whole or in part, and to manage and administer a fund or funds therefor; to consolidate any or all such funds now existing and any fund or funds hereafter established in a single fund, but only upon terms which shall not be violative of the then subsisting legal rights of the actual or expectant beneficiaries thereof.

21. To regulate the custody, handling and paying out of the moneys of the City; to prescribe and enforce conditions and regulations with respect to the making and execution, in behalf of the City, of contracts and purchases of any or all descriptions and to enforce such regulations by forfeitures, penalties and otherwise; to audit and allow claims not legally enforceable but just and equitable obligations for which the City or any county therein has received a benefit, provided that the same if they were otherwise valid would not be barred by a Statute of Limitations and that no power shall exist to grant extra compensation to any public officer, employee or contractor; to audit and pay the expenses of and charges upon any officer or employee of the City or of any county therein which may have been incurred by reason of or in defending himself for performing any act expressly directed by or under the express authority of any ordinance of the City; to audit and pay the reasonable expenses of any successful contestant for any office of the City or of any County therein incurred in prosecuting or defending such contest.

22. To prescribe regulations with respect to the days and hours during which public offices of the City shall be open and with respect to access by the public to buildings, offices and structures belonging to or controlled by the City, the keeping, custody and indexing of and access to instruments affecting land in the City, the inspection of city or county records of all kinds and the fees to be paid to the City for the use thereof and for official copies thereof.

23. To provide for policing the City and to authorize special patrolmen for particular districts, businesses or purposes and to define their powers; to provide for the custody and care of persons accused or convicted of crime or misdemeanor and the detention of witnesses in criminal proceedings; to provide for the custody and disposition of stolen or unclaimed property and the proceeds thereof; to prevent and extinguish fires and to protect the inhabitants of the City and property within the City and as well neighboring property upon land or water without the City from loss or damage by fire or other casualty; to make rules and to compel the installation of safeguards to prevent the loss or imperiling of life or property by reason of fire or casualty; to establish and enforce a sanitary code for the City and all needful quarantine regulations; to exercise all powers requisite to prevent or abate pestilence and epidemics; to provide for the removal and disposition of dead bodies; to regulate the location and use of cemeteries; to provide for the inspection and testing of machinery, apparatus, appliances, pipes, wires and other instrumentalities, firearms and other weapons, foods and other products, commodities or articles which are or may become dangerous, deleterious or unsanitary, and for the prohibition or regulation of the use, sale or retention thereof within the City and for the destruction thereof if the public interest shall so require; to provide for or require the removal of garbage, ashes and waste of all kinds; to regulate the dumping of any such materials on land or into waters and the filling in of low or waste places; to regulate the observance of Sundays and legal holidays; to prescribe rules for and to regulate traffic in public places upon land or water within the City and the instrumentalities thereof; to regulate, restrict or prohibit the erection, maintenance and posting of fences, hoardings, bill-boards and advertising structures and advertisements on private property which may obstruct or obscure the view of or from highways, streets, parks or other public places, or otherwise tend to endanger, obstruct or impede traffic thereon, or which by reason of instability or action of the elements may threaten to imperil or obstruct traffic or which shall so disfigure any such highway, street, park or other public place as to detract from the proper enjoyment or use thereof by the public; to license and regulate businesses and occupations

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carried on in the City and the instrumentalities thereof; to regulate and supervise the construction, reconstruction, installation, repair and demolition of buildings and other structures and of sewers, drains, pipes, wires and connections of every description installed by private owners; to compel the remedying of conditions in buildings which are prejudicial to safety or health and to prohibit the use thereof during the continuance of any such conditions; to provide for or compel the destruction of buildings which are a menace to life or in order to prevent the spread of fire; to provide for the registration and reporting of births, marriages, deaths, strangers sojourning in the City, residents at hotels, tenants of buildings and the crews and passengers of vessels; to provide for offering and paying rewards; to establish and enforce the observance of standards of weights and measures; to relieve, instruct, and care for children and poor, sick, infirm, defective, insane, inebriate or invalid persons in the City; to require such of the foregoing as shall be charges upon the City and shall be reasonably capable thereof to perform labor, either with or without pay as may be just and practicable, and to provide means and facilities therefor and to dispose of the product thereof; to punish the delinquencies of all such charges; to commit, indenture, place out, discharge and transfer any minor who is a public charge and to revoke or terminate any such commitment or arrangement; to compel the support of wives, children, whether legitimate or illegitimate, and of poor persons, by those upon whom they naturally should be dependent; to provide for the burial of indigent persons; to contribute to and supervise and to require reports from charitable, eleemosynary, correctional or reformatory institutions, wholly or partly under private control; to require questions concerning the undertaking of businesses or enterprises by the City to be submitted to vote of the electors thereof as provided in Section 1 of Article X, and to provide for the time and, consistently with the Election Law, the manner of submission of any such matter and for the ballots to be employed in voting thereon.

24. To investigate and inquire into all matters of concern to the City or its inhabitants or any of the counties contained therein concerning which the City is hereby granted any power of legislation, determination, regulation

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or action, and to require and enforce by subpoena the attendance of witnesses and the production of books, papers and records at such investigations with all of the powers which the Legislature of the State of New York might exercise in the premises; to require to be published and to provide for and regulate the publication of municipal advertisements and of information of public interest or the publication whereof is required by law.

25. Subject to and consistently with the laws of the State heretofore or hereafter enacted applicable within the City dealing with matters solely of State concern or of concern common to the State and the City, (not including, however, laws upon any of the subjects with respect whereunto power is expressly granted to the City by this Act), to exercise all of the powers requisite or proper for the government and administration of the City and its affairs, it being intended hereby to grant and confirm to the people of The City of New York the right of self-government in local and municipal matters and also, subject to such general laws applicable within the City as hereafter may be enacted by the Legislature of the State, in every matter of concern common to the State and the City over which the State shall not have taken jurisdiction by virtue of general laws applicable within the City. The power of legislation conferred upon the City by this Act includes the power to supersede, wholly or in part, as to and within the City of New York or to reenact in modified form, so as to have the force of law with respect to and within the City, any law or portion of law of the State of New York, heretofore or hereafter enacted, which deals with any matter solely of municipal or local concern in or to the City of New York, including, among others, all matters concerning which powers are delegated to the City by this Act, save in respects as to which power is not so delegated; provided only that power shall not exist to supersede any law of the State applicable within the City hereafter enacted if such law shall expressly provide to the contrary. Such power of legislation may be exercised from time to time by original enactment, amendment or repeal. No law of this State hereafter enacted shall be deemed or construed to repeal, amend, supersede or modify any of the provisions of this Act, or to impair the power of the City thereafter to supersede or modify the provisions of

such law, if and as in this Act provided, unless such law shall so expressly provide and the provisions of this Act shall be subject to and controlled by only (a) such general laws, whatsoever their form, as shall be passed hereafter and shall by their express terms or by unmistakable indication of such intent be made applicable to the City of New York and (b) general laws or parts of general laws heretofore passed to which by the express terms of this Act or its plain intent the same is made subject and then only with respect to subjects as to which such provision is so made. The enumeration herein of certain powers shall not be construed to deny The City of New York any right or power essential or proper to the full exercise of such right of self-government, provided such right or power under the constitution might be devolved or conferred upon the City or any of its authorities by the Legislature in express language; but nothing herein nor any ordinance passed in pursuance of the powers hereby conferred, shall diminish the tax-rate for State purposes fixed by act of the Legislature.

ARTICLE V

Elective Officers

SECTION 1. The Mayor, Comptroller, President of the Board of Aldermen, the President of the several boroughs, and the Members of the Board of Aldermen, who in the first instance shall be forty-nine in number, shall be the only elective officers of the City. Each of the presidents of boroughs shall be known as "Borough President" of his borough and Members of the Board of Aldermen shall be known as "Aldermen."

SECTION 2. The Mayor, Comptroller and President of the Board of Aldermen must be residents of the City; each Borough President must be a resident of the borough of which he is president and Aldermen must be residents of the districts by which they are elected, respectively. In the event that the Mayor, the Comptroller or the President of the Board of Aldermen shall cease to be a resident of the City or that a Borough President shall cease to be a resident of his borough or that an Alderman shall cease to be a resident

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of his aldermanic district, his office shall, *ipso facto*, become vacant.

SECTION 3. The Mayor, Comptroller, President of the Board of Aldermen and the five Borough Presidents when sitting as a body, shall constitute the Board of Estimate and Apportionment of the City.

ARTICLE VI

Elections—Removals—Vacancies

SECTION 1. The Mayor, the Comptroller and the President of the Board of Aldermen shall be elected by the electors of the City at large by plurality votes. Each Borough President shall be elected by like vote of the electors of his Borough.

SECTION 2. The City shall be divided into nine Aldermanic districts as follows:

(1) The Borough of The Bronx shall constitute the First Aldermanic District.

(2) The First, Second, Third, Fourth, Fifth, Sixth, Eighth, Tenth and Twelfth Assembly Districts, as they now exist in the Borough of Manhattan, shall together constitute the Second Aldermanic District.

(3) The Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth and Twentieth Assembly Districts, as they now exist in the Borough of Manhattan, shall together constitute the Third Aldermanic District.

(4) The Seventh, Ninth, Eleventh, Thirteenth, Nineteenth, Twenty-first, Twenty-second, and Twenty-third Assembly Districts, as they now exist in the Borough of Manhattan, shall together constitute the Fourth Aldermanic District.

(5) The Borough of Queens shall constitute the Fifth Aldermanic District.

(6) The Fourth and Eighth Senatorial Districts, as they now exist in the Borough of Brooklyn, shall together constitute the Sixth Aldermanic District.

(7) The Fifth, Sixth and Eleventh Senatorial Districts, as they now exist in the Borough of Brooklyn, shall together constitute the Seventh Aldermanic District.

(8) The Seventh, Ninth and Tenth Senatorial Districts, as they now exist in the Borough of Brooklyn, shall together constitute the Eighth Aldermanic District.

(9) The Borough of Richmond shall constitute the Ninth Aldermanic District.

SECTION 3. In the first instance, said Aldermanic Districts shall elect respectively, the number of Aldermen next specified, viz.: First District, 7; Second District, 7; Third District, 5; Fourth District, 6; Fifth District, 5; Sixth District, 6; Seventh District, 6; Eighth District, 6; Ninth District, 1.

SECTION 4. Candidates for Aldermen shall be nominated and voted for, the votes cast for candidates shall be counted and Aldermen shall be elected by and in accordance with a system of proportional representation in such manner as may be provided in the Election Law. RR

SECTION 5. The Board of Aldermen may make by ordinance needful rules and regulations, not inconsistent with this Act or with the Election Law, for the conduct of Aldermanic elections, the prevention and punishment of fraud in connection therewith and the recount of ballots in cases of doubt or apparent fraud. Reval L.

SECTION 6. The Board of Aldermen may once, but not more than once, after the return of each enumeration of inhabitants in any State or Federal Census, which shall provide the data necessary for so doing, beginning with the Federal Census to be taken in the year 1930, increase or decrease the number of Aldermanic districts, the total number of Aldermen to be elected and the number thereof to be elected by the Aldermanic districts respectively and may alter the boundaries of such districts. Every Aldermanic district shall be of as compact form as practicable and shall consist of contiguous territory and no borough shall be divided in the formation of Aldermanic districts except to form two or more districts wholly within such borough. The quota to be employed in apportioning Aldermen among districts shall always be determined by dividing the entire number of the inhabitants of the City, excluding aliens, as shown by such last preceding census, by the total number of Aldermen to constitute the Board of Aldermen and each Alder-

manic district shall be entitled, as nearly as practicable, to elect as many Aldermen as the quotient which shall be obtained by dividing the number of its inhabitants, excluding aliens, by the quota so determined. To the extent consistent with the provisions of this Section with respect to the formation of Aldermanic districts, each Aldermanic district shall contain not less than five times as many inhabitants, excluding aliens, as the number of such quota.

SECTION 7 Any of said elective officers, except Aldermen, may be removed by the Board of Aldermen upon charges of misconduct in office or of incapacity preferred by the Board of Estimate and Apportionment by means of a resolution adopted by not less than ten votes, provided two-thirds of all of the qualified members of the Board of Aldermen shall vote in favor of his removal; but only after trial of such charges and full opportunity to make defense. Any Alderman may be removed from office by resolution of the Board of Aldermen adopted by not less than a two-thirds vote of all of the qualified members of said Board.

SECTION 8. Any vacancy in the office of Mayor, Comptroller or President of the Board of Aldermen shall be filled by election by the Board of Aldermen. Any vacancy in the office of Borough President or Alderman shall be filled by election by the Aldermen representing the borough from which the officer whose office shall have become vacant was elected. Any person so elected shall hold office until the first day of January succeeding the election at which his successor shall be elected.

SECTION 9. The annual salaries of said elective officers shall be the following:

Mayor, \$25,000; Comptroller, \$25,000; President of the Board of Aldermen, \$15,000; Borough President, \$12,000; Aldermen, \$6,000.

ARTICLE VII

Distribution of Powers Conferred Upon the City

Each of the officers, boards, departments, bureaus and commissions of the City except the Board of Aldermen, shall possess only the powers granted by this Act or otherwise under its authority, and each officer of any of the counties

comprised in the City, except county officers the powers whereof are not made subject to control by the City in subdivision 14 of Article IV, shall possess only the powers conferred upon them by law of which they shall not have been deprived as authorized by this Act and the powers conferred upon them by the City under the authority hereof. All of the powers conferred upon the City by this Act which are not granted by this Act to, or conferred under its authority upon, some other board or boards or upon officers, departments, bureaus or commissions of the City shall be exercised in its discretion by the Board of Aldermen or as it may deem necessary for the performance of administrative duties or ministerial acts, by officers, boards, departments, commissions or other authorities of the City or any county therein under delegation and as authorized by it. As between the Board of Aldermen and every other authority of the City, said Board shall be deemed entitled to exercise all of the powers conferred upon the City which by this Act are not, or under its authority shall not be, granted in express terms or by clear intendment to one or more of the other authorities of the City or of a county therein.

ARTICLE VIII

Board of Aldermen

SECTION 1. The Board of Aldermen shall have all of the powers of a legislative body for the purpose of determining the qualifications of its members, its rules and methods of procedure and for all other purposes within the scope of its powers.

SECTION 2. The President of the Board of Aldermen, when present, shall preside over the sessions of said Board when acting as such, and shall have such powers with respect to the appointment of committees and employees of and the proceedings of said Board and of any of its committees and the direction of its employees as may be conferred upon him by the rules or resolutions of said Board. He shall not be entitled to a vote as a member of said Board, but, as the presiding officer thereof, he or in his absence the Vice-President thereof or other presiding officer, shall be entitled to a casting vote in the event that the votes of Aldermen upon any

ordinance, resolution, motion or other proposition shall be equally divided. The Vice-President or such other presiding officer shall also be entitled to a vote as a member of the Board.

SECTION 3. The Board of Aldermen shall elect from their own number a Vice-President who shall possess the powers and perform the duties of the President of the Board of Aldermen when the latter is absent, incapacitated, under suspension or acting as Mayor or when a vacancy exists in the office of President of the Board of Aldermen, and who, at such times, shall be a member of every committee, board and body, of which the President of the Board of Aldermen is a member by virtue of his office.

SECTION 4. The Board shall choose a clerk and such other officers as it may deem necessary and shall keep and publish a journal of its proceedings, and the doors shall be open except when by a two-third vote of all of its qualified members it shall declare that the public welfare requires secrecy.

SECTION 5. The first meeting of the Board of Aldermen in each year shall be held on the first Monday of January at noon, and thereafter as the board may for itself determine, but at least once in each month, except July and August. A majority of the Board of Aldermen shall constitute a quorum, and no measure having the effect of law shall be passed by vote of less than a majority of its members.

SECTION 6. Every act of the Board of Aldermen shall be by ordinance or resolution.

The style of ordinances shall be:

"Be it Ordained by The City of New York as follows:"

SECTION 7. All ordinances shall be general in application and no special ordinance shall be enacted, except that ordinances applicable throughout one or more of the boroughs but not throughout the City may be enacted. Every ordinance shall have a title prefixed concisely expressing its content. No ordinance or resolution, which if enacted would have the force of law, shall be passed or become effective unless it shall have been printed and upon the desks of the members, in its final form, at least one week prior to its final passage; nor unless after its passage it shall receive the

approval of the Mayor or shall have been again passed without his approval after ten days (Sundays excepted) from the date of its presentation to him, and within sixty days after the date of its original passage.

SECTION 8. Every ordinance or resolution of the Board of Aldermen, except such resolutions as concern only its own organization, rules, committees and procedure, shall be presented to the Mayor, after its passage and before it takes effect; if he approve he shall sign it; if not, he shall return it to the Clerk of the Board of Aldermen within ten days (Sundays excepted) after its presentation to him with his objections, which shall be entered at large on the journal of said Board, and the Board, within fifteen days after such return of the ordinance or resolution or at its next meeting, if held subsequently to the expiration of such period of fifteen days, shall proceed to reconsider it. If after such reconsideration it shall again be passed by a two-thirds vote of all of the Aldermen voting for and against the same, being at least a majority of all of the members of the Board, it shall take effect notwithstanding the objections of the Mayor. If, upon the first vote upon such reconsideration, the ordinance or resolution shall fail to receive such number of affirmative votes, such ordinance or resolution shall be deemed to be finally lost. In all cases of votes upon such reconsideration of any ordinance or resolution, the vote shall be taken by yeas and nays and the names of the members voting and their votes respectively shall be entered in the journal of the Board. If any ordinance or resolution shall not be approved or returned by the Mayor as above provided within ten days (Sundays excepted), after it shall have been presented to him, the same shall take effect in like manner as if he had approved it. In case an ordinance or resolution shall embrace more than one distinct subject and the several subjects shall be separately treated therein, the Mayor may approve the provisions relating to one or more subjects and disapprove the others. In such case, those which he shall approve shall become effective but the remainder of the ordinance or resolution shall be dealt with in the same manner and with the same effect as if it constituted an entire ordinance or resolution which the Mayor had failed to approve.

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SECTION 9. The Mayor, the Comptroller and each of the Borough Presidents may attend all or any of the meetings of the Board of Aldermen and may participate in the deliberations but none of them shall be entitled to vote upon any proposition which may be the subject of action by the Board.

ARTICLE IX

Board of Estimate and Apportionment

SECTION I. The Board of Estimate and Apportionment shall have, and is hereby vested with, full and exclusive authority (a) to exercise or provide for the exercise of all or any of the powers hereinafter in this Article specified and (b) to determine the necessity or the desirability and propriety of, and to authorize, the exercise by any officer, board, department, bureau, commission or other authority, which it shall designate, of the City or of any borough or county therein of any of said powers in this Article specified which are administrative or ministerial in their nature or appropriate to carry into execution the action of the Board; and whenever it shall have determined that any particular power or powers shall be exercised by any such officer, board, department, bureau, commission or other authority to fix the conditions upon which, and the manner in which, the same shall be exercised or in its discretion to delegate the authority to fix such conditions and manner of exercise to the same or some other officer, board, department, bureau, commission or other authority; provided, however, that any of the powers which by the terms of this Article the Board of Estimate and Apportionment is empowered to exercise but which by reason of delegation as aforesaid or otherwise some other officer, board, department, bureau or commission is also authorized to exercise, subject to the power of the Board of Estimate and Apportionment conferred by subdivision (6) of this section, shall not be exercised by the Board of Estimate and Apportionment unless or until the same shall have been withdrawn from such other officer, board, department, bureau or commission and assumed exclusively by the Board of Estimate and Apportionment by resolution thereof as permitted by subdivision (6) of this Section.

Said powers of the Board of Estimate and Apportionment are the following:

1. All and several the powers enumerated in Subdivisions 11, 12 and 17 of Article IV.

2. The power to authorize any public or local improvement and, when required, proceedings to acquire title to property therefor, but only if the estimated aggregate cost of the improvement in question in any particular instance when ascertained as hereinbelow provided shall not exceed the sum of \$500,000. The word improvement as used in this Article comprehends every form of improvement, works, facility and structure referred to in Subdivisions 8, 9 and 10 of Article IV and also bridges and tunnels over or under navigable waters, and the approaches thereto, parks and playgrounds, provided that the estimated aggregate cost of any improvement in question shall not exceed the sum of \$500,000; provided, however, that said limitation of cost shall not apply to the opening, grading, paving or repaving, curbing or otherwise constructing or making ready for use of highways, streets, avenues or bridges, tunnels or viaducts forming parts of highways, streets or avenues and not crossing over or under navigable waters, the approaches to such bridges, tunnels or viaducts, or sewers or drainage systems.

3. In connection with the acquisition of land by the City for any park, highway, street or other public place, the power to authorize or cause to be acquired in fee simple, as part of the same transaction or proceeding, by purchase, condemnation or otherwise, lands additional to those required for such purpose but suitable for building sites to abut upon such park, highway, street or other public place or upon already existing directly intervening streets upon which any such park or other public place also shall abut.

4. (a) With respect to any public or local improvement which the Board of Estimate and Apportionment is empowered to authorize without concurrence of the Board of Aldermen, the power to determine whether any and, if so, how much of the cost of the improvement in question shall be borne by the City as a whole, and if the whole thereof is not to be so borne to apportion the cost thereof as it shall deem just and reasonable among the boroughs of the City, or to allocate the same in whole or in part to any particular borough or boroughs or any part or parts of any thereof;

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to determine, consistently with the provisions of Subdivision 3 of Article IV, whether all or any part thereof, and if so what part, shall be provided for by the assessment of property benefited thereby.

(b) With respect to any and every public or local improvement whatever which shall have been duly authorized by said Board or otherwise, the powers vested in it by Articles XXVIII and XXIX, so far as the exercise of the same shall be requisite or as it may deem the exercise thereof advisable in the premises; any of the powers of the City enumerated in Subdivision 3 of Article IV which by the terms of Article X are not vested in said Board and the Board of Aldermen, conjointly, or which by the terms of Article XXVIII are not required to be exercised by some other authority.

5. The powers enumerated in Subdivision 13 of Article IV, provided that in the event that the Board, in the exercise of any such power, at any time hereafter shall adopt a resolution to establish or change any district, zone or area or establish, change or supplement any limitation, regulation or restriction, the same shall not come into force except upon the following conditions:

(1) The Board shall cause notice of the fact that the Board has provisionally adopted such resolution, the text whereof shall be given in full in such notice, and that a hearing with respect to the expediency thereof will be held by said Board at a specified time and place, to be published in the *City Record* at least twice upon different days not less than one week prior to the date fixed for such hearing;

(2) At the time and place so fixed, the Board shall afford to all persons directly or especially interested in or with respect to such provisional action an opportunity to be heard which shall be as full as shall be practicable;

(3) In case on or prior to the date of such hearing a written protest or written protests against the confirmation of such provisional action duly signed and acknowledged by the owners of twenty per centum of (a) the frontage directly affected by such action, or (b) the frontage directly in the rear thereof, or (c) the frontage directly opposite the same, shall be filed with the Secretary of the Board,

such resolution shall not come into force unless it shall again be adopted by the unanimous vote of said Board; but otherwise, after notice and hearing as above-provided, it may be again adopted by a majority vote thereof; and in either case, if it shall be re-adopted by the vote hereinabove in such case prescribed, the resolution shall come into force.

The districts, zones and areas established and existing at the date when this Act shall come into force, and the regulations, limitations and restrictions then in force, shall continue until altered by the Board of Estimate and Apportionment, as hereinabove provided. The Board may provide by resolution for such investigations, considerations, recommendations and reports by any officer or bureau subordinate to it or by any officer, board or other authority of the City, as it may deem advisable for its information or advice.

6. The powers enumerated in Subdivision 14 of Article IV, provided (1) that any action taken in the exercise of any of said powers shall receive the affirmative vote of the Mayor, and (2) that the Law Department, the Police Department, the Department of Pensions, the Department of Taxes and the Municipal Civil Service Commission shall always remain separate and distinct departments, each headed by its own chief executive officer as in this Act provided, but, nevertheless, the Board of Estimate and Apportionment may provide, if the Mayor shall vote in favor of such action, that any department, whether (a) one of those above named and required to be maintained, except the Municipal Civil Service Commission, or (b) a department created by said Board, as permitted by this Act, may be joined with any other department in a departmental division under a divisional director, who shall have power to supervise, coordinate and regulate the activities of both or all of the departments within his jurisdiction, and to and through whom the heads of the departments so joined shall report; nothing herein contained, however, shall be deemed to authorize the consolidation or merger of any of the departments so specifically established and required to be maintained with or in any other department, board or body, or to authorize the Board of Estimate and Apportionment or any other authority to deprive the commissioner thereof of the power or right to exercise control of the current operations and the discipline of his de-

partment or to authorize any such director to issue orders or to give instructions to any of the subordinates of the commissioner of any said specified departments or to control any such department except by means of general rules, regulations and instructions given to or promulgated through the commissioner thereof; but the Board of Estimate and Apportionment may confer upon the director of any such division the power to suspend for any single period not exceeding ten days any commissioner over whom he shall have jurisdiction as aforesaid.

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can we?* Nothing in the foregoing provisions of this subdivision shall be deemed to prohibit the Board of Estimate and Apportionment to exercise with respect to any of said specified departments any of the powers enumerated in Subdivision 14 of Article IV save only the power to abolish any such department or to consolidate it with another or to deprive such department of the functions which by this Act it is required to discharge or of powers essential to the discharge of such functions or its chief executive officer of the power to exercise control of the current operations and discipline of his department.

The Board of Estimate and Apportionment in its discretion may abolish the Board of Water Supply of the City of New York and in that event provide for the exercise of its powers and functions and the discharge of its duties by such department of the City as shall be charged with the duty of providing and distributing water in the City, or that any of such powers and functions shall be exercised by a separate department of the City, the establishment, organization, powers and duties whereof may be provided for by it.

In the event that any office, board, department, bureau or commission or the Board of Water Supply of the City of New York shall be abolished or any of the powers of any thereof shall be transferred to any other office, board, department, bureau or commission, by action of the Board of Estimate and Apportionment as authorized hereby, no action or proceeding, whether initiated by or for the benefit of or against the City or by or against any officer, board or commission of the City or any County therein or said Board of Water Supply of the City of New York, pending under or as authorized by any of the provisions of any law or laws, nor any action or proceeding with respect to any action taken

or attempted under any such law or laws by any such authority of the City or any such county or by said Board of Water Supply of the City of New York or with respect to matters arising from or in the course of the execution of any public or local improvement or of any project initiated or attempted to be initiated by said Board of Water Supply of the City of New York, shall abate or be stayed by reason of any such action of the Board of Estimate and Apportionment, but the same shall be continued by or against the City or the city or county officer, board or commission to which the powers in question shall have been transferred or in which they shall be vested, but without nominal change of parties, as if such action of the Board of Estimate and Apportionment had not been taken; and the City in such event in every respect shall possess all of the rights and remain subject to all of the obligations which it would have possessed or to which it would have been subject had such action of the Board of Estimate and Apportionment not been taken, and any officer, board, department, bureau or commission to which powers of any other authority of the City or any county or of the Board of Water Supply of the City of New York shall be transferred or in which the same may be vested shall possess and be entitled to enjoy and exercise all of the rights, benefits, privileges, powers and authority theretofore enjoyed or exercised by the officer, board, department, bureau or commission theretofore entitled to exercise the same or of said Board of Water Supply of the City of New York, as the case may be, to the same extent (except as such powers may be limited by action of the Board of Estimate and Apportionment) as if it had been named in the laws or ordinances conferring such powers instead of the officer, board, department, bureau or commission of the City named therein or said Board of Water Supply of the City of New York, as the case may be, and shall be authorized to control the prosecution or defense of any and every such action or proceeding to the same extent as the original grantee of such powers would have been entitled to control the same but for such action of the Board of Estimate and Apportionment.

7. The powers set forth in Subdivision 16 of said Article IV, provided that no franchise shall be granted unless after a full public hearing or full public hearings held pursuant

to notice thereof given by advertisement in the *City Record* and in at least two newspapers of general circulation published in the City, which advertisement shall have been published in each thereof at least once in each calendar week for two successive calendar weeks, and the first publication whereof shall have occurred not less than ten days prior to the commencement of such hearing or hearings, nor unless the resolution granting such franchise shall be passed by at least twelve votes.

8. The power to audit and allow claims certified by the Comptroller to be not legally enforceable but in his opinion just and legal obligations for which the City or any county therein has received a commensurate benefit, provided that the same, if it were otherwise valid, would not be barred by a statute of limitations and that the allowance of any such claim shall be by unanimous vote of the Board, and provided further that no claim for extra compensation shall be allowed in favor of any public officer, employe or contractor; to audit and cause to be paid the expenses of and charges upon any officer or employe of the City or of any county therein which may have been incurred by reason of or in defending himself for performing any act expressly directed by or under the express authority of any ordinance of the City; to audit and cause to be paid the reasonable expenses of any successful contestant for any office of the City or of any county therein incurred in prosecuting or defending such contest.

9. The power to transfer budgetary appropriations exceeding the requirements of the purpose or purposes specified in the budget to another purpose or other purposes provided for in the same budget if the appropriation therefor is determined by the Board to be inadequate, provided that the action of the Board shall be by unanimous vote.

10. The power to authorize the issue of corporate stock or bonds for any purpose, other than such bonds as the Comptroller is authorized to issue by the terms of Article XIII, provided that in the case of any issue designed to provide for the financing of any revenue producing improvement (1) the aggregate amount required to accomplish the purpose which such issue is intended to finance shall not exceed the sum of \$50,000,000 and (2) the cost of any such improvement and its earning capacity shall have been deter-

mined in the manner in Section 2 of this Article below provided.

11. The power to authorize the refunding of any debt of the City which by the terms of Subdivision 19 of Article IV the City is authorized to refund; to fix the rate of interest to be borne by all corporate stock, serial bonds, general fund bonds and assessment bonds to be issued by the City and to determine whether the same severally shall be payable in gold or in legal currency of the United States and whether the same shall be payable, if such payment be demanded, in any foreign coin or the currency of any foreign country, the place or places of payment and the rate or rates of exchange, if any, to be employed; to determine the amount of moneys in the Sinking Fund of the City of New York for the Redemption of the City Debt, which, as provided in said Subdivision 19 of Article IV, may be paid out against the receipt of general fund bonds, and the amount of such bonds to be issued for said sinking fund from time to time as authorized by said Subdivision 19; to exercise all other powers heretofore vested in the Board of Commissioners of the Sinking Fund, which Board is abolished.

12. The power to provide for and supervise the collection and the enforcement of the payment of, or, when it may deem such course to be just and expedient, to compromise, claims for taxes or assessments for public or local improvements that shall be in default and in any such case to reduce liens for taxes or assessments or cause the same to be released and discharged.

13. The power to cause actions or proceedings in any court to be instituted, maintained, defended, appealed or discontinued in behalf of the City in its corporate right or as trustee for its inhabitants, and to authorize controversies to which the City shall be a party to be compromised or settled upon terms to be prescribed or approved by it; to authorize the employment of counsel and expert or technical advisers in special matters.

14. The power to provide for and supervise the publication and management of the *City Record* and to require information of public interest to be published therein as provided in Section 4 of Article XXX.

15. The Board of Estimate and Apportionment also shall exercise such other powers as are expressly conferred upon it by other provisions of this Act or are requisite to the performance of the duties imposed upon it hereby.

SECTION 2. For the purpose of any action to be taken by the Board of Estimate and Apportionment with respect to the issue of corporate stock or bonds for the purpose of financing revenue-producing improvements, the estimated life and cost, and the amount estimated to be required to provide for the financing of any improvement proposed to be acquired or constructed and the estimated average annual earning capacity and operating expense thereof (as defined in Subdivision 19 of Article IV), to the extent that a determination thereof shall be requisite in the particular case, shall be ascertained and reported to the Board by the Chief Engineer, if any, of the Board or by any engineer or engineers or other expert adviser or advisers, whether individual or incorporated, whom the Board shall appoint for the particular purpose. The cost of any property, improvement or facility already owned by the City shall be reported to the Board in writing by the Comptroller.

SECTION 3. Except as otherwise specifically provided in this Act, every act of the Board of Estimate and Apportionment shall be by a majority of the whole number of votes authorized by this section to be cast by the members of said Board, six votes of which majority must be the votes of members authorized to cast three votes each. The Mayor, Comptroller and the President of the Board of Aldermen shall each be entitled to cast three votes; the presidents of the boroughs of Manhattan and Brooklyn shall each be entitled to cast two votes; and the presidents of the boroughs of The Bronx, Queens and Richmond shall each be entitled to cast one vote. A quorum of said Board shall consist of members thereof authorized to cast at least nine votes, at least two of whom shall be members hereby authorized to cast three votes each. No resolution or amendment of any resolution shall be passed at the same meeting at which it is originally presented unless twelve votes shall be cast for its adoption.

SECTION 4. The Mayor shall preside over every meeting of the Board of Estimate and Apportionment at which he shall be present.

SECTION 5. The Board of Estimate and Apportionment shall choose a Secretary and its other officers and subordinates and may establish such offices and bureaus to assist in the performance of its duties as it shall deem needful. It may make rules for the conduct of its proceedings, all whereof shall be open, and may delegate administrative and ministerial powers to its committees and officers.

ARTICLE X

Concurrent Jurisdiction of the Board of Aldermen and the Board of Estimate and Apportionment

SECTION 1. The Board of Aldermen and the Board of Estimate and Apportionment shall have and are hereby vested with authority, when acting conjointly as in this Article X provided, (a) to exercise or provide for the exercise of all or any of the powers hereinafter in this Article specified or (b) to determine the necessity or the desirability and propriety of and to authorize the exercise by any officer, board, department, bureau, commission or other authority which it shall designate of the City or of any borough or county therein of all or any of said powers which are administrative or ministerial in their nature, and (c) whenever said two Boards shall so have determined that any particular power or powers shall be exercised by any such officer, board, department, bureau, commission or other authority to fix the conditions upon which and the manner in which the same shall be exercised or in their discretion to delegate the authority to fix such conditions and manner of exercise thereof to the same or some other officer, board, department, bureau, commission or authority.

The said powers are the following:

(1) The power to determine the necessity for and to authorize public or local improvements, and the acquisition of title to property therefor, other than such improvements as the Board of Estimate and Apportionment is empowered to authorize by the provisions of Subdivision 2 of Section 1 of Article IX. The word improvement as used in this Article comprehends every form of improvement, works, facility and structure referred to in Subdivisions 8, 9 and 10 of Article IV and also bridges and tunnels over or under

navigable waters, and the approaches thereto, parks and playgrounds, provided that the estimated aggregate cost of any improvement in question shall exceed the sum of \$500,000.

(2) In connection with and for the purposes of such improvement, the power to determine the nature and location thereof, the method, whether by purchase or condemnation or otherwise, by which property therefor shall be acquired, whether and how much of the cost thereof shall be borne by the City, any borough or boroughs or any part or parts of any thereof, and consistently with the provisions of Subdivision 3 of Article IV, whether all or any part thereof, and if so what part, shall be assessed and levied upon property benefited thereby; but the construction of such improvement, the acquisition of property and proceedings therefor, proceedings for the making of assessments and awards and determinations, except as aforesaid, preliminary thereto and all other action looking to the execution of such determinations of said Board of Aldermen and Board of Estimate and Apportionment, acting conjointly, shall be provided for, taken or carried out by the authorities and in the manner elsewhere in this Act specified in such cases or in the absence of such specification by or under authority of the Board of Estimate and Apportionment.

(3) The power to subdivide the City into local improvement districts; to create, provide for the membership and define the powers and functions of local improvement boards.

(4) The power to establish, maintain and provide against the depletion of street opening improvement, administrative and reserve funds and accounts.

(5) The power to cede to the State of New York or the United States of America any property of the City or any interests or rights in or with respect to any thereof.

(6) The powers conferred upon the City by Subdivision 15 of Article IV, and any action taken in the exercise of any of said powers shall be effective and binding notwithstanding any law of contrary or different effect in existence at the time of the taking of such action.

(7) The power to authorize the issue of corporate stock and bonds to finance a revenue producing improvement, when the estimated amount required for financing the same

shall exceed the sum of \$50,000,000. Such power shall be exercised upon the same conditions and subject to the same limitations otherwise as are provided in Article IX hereof with respect to the exercise of like power by the Board of Estimate and Apportionment in connection with improvements requiring for their financing not to exceed \$50,000,000.

(8) The powers enumerated in Subdivision 18 of said Article IV, provided (first) that the power to engage in or to authorize the establishment or prosecution of any business or enterprise the cost or the estimated cost of the plant and equipment wherefor shall not exceed the sum of \$50,000,000 and the estimated gross annual operating expense whereof, as defined in Subdivision 19 of Article IV, shall not exceed \$10,000,000, shall not be exercised unless or until it shall be ascertained in the manner provided in Section 2 of Article IX that the estimated gross annual earnings of such business or enterprise will equal or exceed the estimated gross annual operating expenses thereof, as defined in Subdivision 19 of Article IV; and provided (second) that the power to engage in or to authorize the establishment or prosecution of any business or enterprise the cost or estimated cost of the plant and equipment wherefor shall exceed the sum of \$50,000,000 or the estimated gross annual operating expense whereof as defined in Subdivision 19 of Article IV, shall exceed \$10,000,000 shall not be exercised except upon and after compliance with the following conditions:

(a) The Board of Estimate and Apportionment shall prepare or cause its Chief Engineer or any engineer or engineers designated by it, to prepare, pursuant to its directions, plans and specifications of the plant and equipment required for the projected business or enterprise and a statement of project which shall comprise a description of the nature of the business or enterprise to be undertaken and of the proposed method of conducting the same and a statement of the rates or prices proposed to be charged for the services or commodities to be furnished thereby and of authorized readjustments, if any, of such rates and prices. The cost of the plant and equipment of or for such proposed business or enterprise shall be ascertained, if or to the extent that the same already is owned by the City, by a written report of the Comptroller which, at the request of the Board of Estimate and Apportionment, shall be presented to the commission next herein-

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after provided for. To the extent that such plant and equipment shall not already be owned by the City and is to be acquired or constructed by it, the estimated cost thereof and, in any event the estimated gross annual earnings and gross annual operating expense of such business or enterprise, as defined in Subdivision 19 of Article IV, shall be ascertained as follows:

A commission of three members shall be constituted, one of whom shall be an engineer of experience, who shall be designated by the Board of Aldermen when requested by resolution of the Board of Estimate and Apportionment, one of whom shall be an expert cost-accountant who upon like request shall be designated by the Comptroller and one of whom (who shall be the member last appointed) shall be a person experienced in business, banking or finance who upon like request shall be designated by the Presiding Justice of the Appellate Division for the First Department. All of the members of said commission shall be residents of the City and none of them shall be an officer of or a person holding any position or exercising any employment under the City or any county therein. The Board of Estimate and Apportionment shall refer to such commission the plans, specifications and statement of project prepared as above-provided for report concerning all matters required to be determined, as aforesaid; the commission shall investigate, as in its own discretion it may deem best, all of the matters so referred to it and within not exceeding four months from the date of such reference to it, shall report to the Board of Estimate and Apportionment its conclusions and the grounds therefor and such facts and data as in its opinion may be material to an understanding or the consideration thereof. It may, in addition, prepare modifications of said plans, specifications and statement of project and make a like report based upon the same as so modified. The commission shall act by a majority vote of its members but minority or explanatory reports also may be filed by individual members. The members of the Commission shall be entitled to receive from the City reasonable compensation for their services. The Board of Estimate and Apportionment may agree with the members of the Commission concerning the amount of compensation

to be paid to them respectively and any agreement so made shall be binding upon the City.

(b) In the event that it shall appear by the report of said commission that the estimated average gross annual earnings of such business or enterprise, during the estimated life thereof, which shall in every case be assumed to be not exceeding fifty years, will at least equal the estimated average gross annual operating expenses thereof, as in Subdivision 19 of Article IV defined, it shall be lawful for the Board of Aldermen and the Board of Estimate and Apportionment, by joint resolution, to provide that the City shall engage therein and for the establishment thereof; but before such action or any action to that end shall be effective to authorize any such undertaking or the making of any expenditure or agreement therefor, the statement of project, the report, if any, of the Comptroller and the report or reports of such expert commission and of the members thereof above provided for and the said joint resolution or resolutions of the Board of Aldermen and Board of Estimate and Apportionment shall be published in full in the *City Record* and the proposition that the City shall engage in such business or enterprise shall be submitted to the electors of the City, either at the next general election held in an odd numbered year or at a special city election, which may be called for the purpose by the Board of Aldermen, the same, in either case, to be an election held not less than sixty days after such publication in the *City Record*, and the action of the Board of Aldermen and the Board of Estimate and Apportionment taken as aforesaid shall not come into force or possess any virtue as an authorization of action thereunder unless it shall be confirmed by the affirmative votes of a majority of all of the electors voting in favor of and against the confirmation thereof.

(9) The powers enumerated in Subdivision 20 of Article IV, subject to and consistently with the provisions of Article XXI of this Act.

(10) The power to make and adopt the annual budget of the City as and in the manner provided in Article XXV hereof.

SECTION 2. In the event that during any calendar year any enterprise in which the City hereafter shall engage

under the authority conferred by Subdivision 18 of Article IV shall fail to produce gross earnings susceptible of realization sufficient to meet in full the gross expenses and charges thereof for such calendar year, as hereinafter defined, it shall be the duty of the Board of Estimate and Apportionment, immediately so to increase the rate or rates or price or prices collected by the City for the service or commodity furnished by such enterprise that the annual gross earnings of such enterprise shall thereafter, at least, or as nearly as possible, equal the gross annual expenses and charges thereof, and power is hereby conferred upon the Board of Estimate and Apportionment so to do, notwithstanding any law, ordinance, joint-resolution or contract to the contrary or otherwise providing.

Any tax-payer of the City and any owner of corporate stock or bonds issued by the City in order to finance the plant and equipment, or either thereof, of such enterprise shall be entitled to maintain in any court of competent jurisdiction proceedings for an order of mandamus or for an injunction to enforce the duty of the Board of Estimate and Apportionment, in this Section or in Subdivision (8) of Section 1 of this Article declared, or to restrain any violation thereof, and power and jurisdiction are hereby conferred upon the Supreme Court sitting in any county comprised within the City to enforce the performance or restrain the violation of such duty and, if in the judgment of the court it shall be necessary so to do in order fully to accomplish the purposes of this section, by its order or judgment to determine and to enforce the adoption of rates or prices which in its opinion shall comply with the requirements hereof.

The term "gross expenses and charges", or any equivalent phrase, used in this Act with regard to the operation of any such enterprise, during any calendar year, shall be deemed to mean and comprehend: (aa) all expenses of operating and conducting such enterprise during such calendar year, (bb) ordinary maintenance thereof (including, among other things, depreciation of equipment, machinery and appliances), for such year, (cc) all other expenses and charges to which the City may be subject which upon approved accounting principles should be deemed to be or attributed as an expense of such enterprise for such year, (dd)

a proper annual contribution to a reserve fund, which shall be created and maintained by and solely for the benefit of such enterprise, the annual contributions whereto shall be adequate, as nearly as can be estimated, to provide for any deficit that may occur in the gross annual earnings of such enterprise as compared with its gross annual expenses and charges during the period for which any such deficit may be deemed liable to exist notwithstanding the provisions of this Section for the readjustment of rates or prices, (ee) the amount necessary to be paid during or with respect to such year in order to amortize the entire investment in such enterprise in equal annual installments during the estimated life of such investment, which shall not be deemed to exceed fifty years, and (ff) the entire amount of interest accruing during such year upon all obligations of the City in order to finance such enterprise which shall then be outstanding, less the amount of any fund which shall exist in cash or marketable securities, other than obligations of the City, which shall be available and applicable solely and shall be irrevocably pledged to the redemption of such outstanding obligations.

Neither the provisions of this Section nor the limitations and conditions prescribed in Subdivision (8) of Section 1 of this Article upon the exercise of the powers of the City conferred in Subdivision 18 of Article IV shall apply to the continued operation of specific improvements or enterprises which are now operated by the City but all thereof shall apply, according to their terms, to proposals to engage in and to the operation of all improvements and enterprises hereafter undertaken or proposed to be undertaken whether or not the property thereof or required therefor be now owned by the City in whole or in part.

SECTION 3. Every act of the Board of Aldermen and the Board of Estimate and Apportionment with respect to which concurrent action of said two Boards is required shall be by joint resolution except as otherwise expressly provided in this Act. Such resolutions, except as provided in Article XXV with respect to the Annual budget, may originate in either body and may be concurred in, rejected and, subject to concurrence by the coordinate body, amended by the other.

SECTION 4. Every joint resolution adopted by the Board of Aldermen and the Board of Estimate and Apportionment

shall be presented to the Mayor and by him signed or returned with his objections or retained without signature and, in case it is returned with objections to the same in whole or in part, reconsidered by the two Boards, except as next hereinbelow provided, all in like manner, within the periods of time and in every respect with the effect provided in Sec. 8 of Article VIII of this Act with respect to ordinances and resolutions of the Board of Aldermen. In the event that a joint resolution is returned by the Mayor with objections it shall be so returned to the Board with which it originated and if after reconsideration by said Board it shall again be passed by it by not less than a two-thirds vote, it shall be sent with the Mayor's objections to the other Board and if upon reconsideration by that Board it shall also be passed by not less than a two-thirds vote, it shall take effect notwithstanding the objections of the Mayor. This section, however, shall not apply to proceedings for the adoption of the annual budget which shall be as prescribed in Article XXV.

ARTICLE XI

Executive

The Executive power of the City shall be vested in the Mayor, the Comptroller, the Presidents of the several boroughs, the boards and commissions and the heads of the several departments and divisions, if any, established by or under authority conferred in this Act.

ARTICLE XII

The Mayor

SECTION 1. The Mayor shall be the chief executive officer of the City.

SECTION 2. The Mayor shall have power and it shall be his duty:

1. At his pleasure to appoint and to remove, for cause to be stated in the *City Record*, all officers (except elective officers and their subordinate officers), all heads of departments and divisions, if any, and any or all of the members

of permanent boards and commissions of the City, whether established by this Act or under its authority, and neither certiorari nor other proceeding for judicial review of his action in so doing shall lie or be entertained; provided (1) that subject to and pending the exercise by the Board of Estimate and Apportionment of the power conferred by Subdivision (6) of Section 1 of Article IX and the exercise by said Board and the Board of Aldermen acting conjointly of the power conferred by Subdivision (6) of Section 1 of Article X, all officers and employes subordinate to any Borough President shall be appointed and may be removed by him at pleasure but subject to and consistently with the Civil Service Law whenever applicable, and (2) that officers and heads of departments and members of boards or commissions concerning whose removal express provisions are contained in this Act may be removed only in the manner and upon the conditions expressly provided herein with respect thereto; to fill all vacancies in offices which he is empowered to fill by appointment in the first instance.

2. To observe the operations of all of the officers and departments and the divisions, if any, of the City government, and of the boroughs and counties within the City, and to supervise generally the operations of all offices, departments and divisions the heads whereof he is empowered by this Act to appoint or remove. The Mayor may require any officer or employe of the City or of any of the boroughs or counties therein to submit to examination, under oath or otherwise, and, by subpoena may require and enforce the attendance of witnesses and the production of books, records and papers, and wilful false swearing in any such inquiry shall be perjury, and shall be punishable as such.

3. To be vigilant in causing the ordinances of the City and the laws of the State to be executed and to be enforced within the City.

4. At his pleasure to convene special meetings of the Board of Aldermen and of the Board of Estimate and Apportionment and to determine the character and length of notice required therefor.

5. To recommend to the Board of Aldermen and, with respect to matters as to which the Board of Aldermen and the Board of Estimate and Apportionment are required to

act conjointly, to the Board of Estimate and Apportionment, all such measures as he shall deem expedient.

6. To communicate to the Board of Aldermen at least once in each year a general statement of the condition of the Government and finances and the public works, improvements and property of the City.

7. Generally to perform all such duties as are prescribed for him by this Act, and all such as may be prescribed by city ordinances and by the laws of the State.

SECTION 3. The Mayor shall appoint and may remove at pleasure a Commissioner of Inquiry. Such Commissioner shall appoint and remove at pleasure two persons who shall be deputy commissioners of inquiry, one of whom shall be a certified public accountant, each of whom shall perform such duties as the Commissioner shall direct. When so designated by the Commissioner, either of such deputies may preside at any investigation authorized by this section. Such designation may be general in terms but shall be for a period not longer than three months, shall be in writing and filed in the office of the Commissioner of Inquiry, and may be revoked at any time by the written order of the Commissioner filed in his office. Either of such deputy commissioners, in the event of sickness, disability or absence from the City of the Commissioner, or in case there be a vacancy in the office of the Commissioner, may be designated by the Mayor with full power and authority to act for and in place of such Commissioner. Such designation may be general in terms but shall not be for a period longer than three months, shall be in writing and filed in the office of the Mayor and of the Commissioner of Inquiry, and may be revoked at any time by the written order of the Mayor filed in said offices. It shall be the duty of the Commissioner of Inquiry, once in three months, to make an examination of the offices of the Comptroller and Chamberlain, in connection therewith with such examination as he shall deem advisable of those officers and departments making returns thereto, of the receipts and disbursements of the City and to report to the Mayor a detailed and classified statement of the financial condition of the City as shown by such examinations. He shall also make such special examinations of the organization, accounts, financial or other transactions, methods of operation and

conduct, generally or specially, of any or all of the officers, boards, departments, bureaus and commissions of the City and of the boroughs and counties therein as the Mayor may from time to time direct, and such other examinations as the Mayor may deem advisable in the interest of the City and direct by written order, and shall report to the Mayor and to the Board of Aldermen the results thereof. For the purpose of ascertaining facts in connection with any such examination, the Commissioner or a deputy commissioner designated as aforesaid shall have full power to compel the attendance of witnesses, to administer oaths and to examine such persons as he may deem necessary. False swearing in the course of any such examination shall be perjury and punishable as such. Any witness called and sworn in the course of any such examination, other than officers and employes of the City or of any county therein, shall be entitled to be represented by counsel.

SECTION 4. The Mayor may veto the action of the Board of Aldermen or of the Board of Aldermen and the Board of Estimate and Apportionment acting conjointly, as elsewhere in this Act provided.

SECTION 5. The Mayor is a magistrate and at his pleasure may exercise within the City all of the powers conferred upon magistrates by law.

ARTICLE XIII

The Comptroller

SECTION 1. The Comptroller shall be the chief financial officer of the City.

SECTION 2. Consistently with the other provisions of this Act, the Comptroller shall prescribe the manner and form in which all revenues and other moneys of the City or of the Counties therein shall be collected, deposited, evidenced, transmitted, disbursed and accounted for, and shall designate the banks and trust companies in which moneys of the City may be deposited and the limits of the deposits to be made in the same severally, and may make the payment of a specified rate or specified rates of interest upon deposits by depositaries a condition of the designation of such depositaries respectively.

SECTION 3. The Comptroller shall prescribe the form and methods of accounting to be used by all offices, boards, departments, commissions and corporations maintained wholly or in part by appropriations made by the City, and, for such purpose, may conduct such inquiries and require such information as he may deem necessary.

SECTION 4. The Comptroller shall cause each and all of the receipts, disbursements, financial transactions and accounts of every officer, board, department, bureau and commission of the City, or of any of the counties therein, of every corporation maintained in whole or in part by means of appropriations made by the City, and of every other person or body who shall hold, receive, disburse or be responsible for any of the revenues or monies of the City or any of its financial transactions, to be regularly examined and audited; and at least once in each calendar year prior to the first day of July he shall cause to be prepared and published in the *City Record* a statement setting forth the true results of the operation during the preceding calendar year of each revenue-producing improvement operated and each enterprise or business carried on by or for the City, including an income account of the character which in accordance with approved accounting methods would be prepared by private corporations operating properties or enterprises of like character, and a statement of the true financial condition of such improvement or enterprise, which shall in every case accurately exhibit the cost of the improvement or of the plant and equipment of said enterprise or properly attributable thereto and of the indebtedness of the City contracted for the purpose of financing the same or properly attributable thereto and which shall include a general balance-sheet, together with a proper profit and loss account, and shall set forth in detail all items of expense, if any, which are carried in any suspense account or otherwise held in suspense or abeyance for distribution over subsequent years or for any other purpose. Each such statement shall be prepared in such manner that a person without knowledge of technical accounting may ascertain therefrom the true condition of such improvement or enterprise and the actual results of the operation thereof by the City. The provisions of this Section shall apply with respect to all

revenue-producing improvements and enterprises now operated or carried on by the City as well as to all such as hereafter may be established.

SECTION 5. No payment or disbursement of public moneys shall be made except upon a warrant drawn and signed by or for the Comptroller and countersigned by or for the Mayor; and no warrant for any disbursement or payment by the City for any city, county or other purpose shall ever be signed except for a purpose and in an amount theretofore duly authorized, nor unless an auditor of accounts shall have certified that the charges therefore are just and reasonable or have been duly fixed by judicial proceedings to which the City or the Comptroller was a party or by public letting or that the same have been settled and adjusted by the Comptroller.

SECTION 6. The Comptroller shall settle and adjust all claims in favor of and against the City or any of the counties therein or any officer, board, body, commission or corporation maintained wholly or in part by appropriations made by the City.

SECTION 7. The Comptroller may require any person presenting a claim or demand for any cause whatever to submit to examination under oath, and may by subpoena require and may enforce the attendance of witnesses, and the production of books, papers and records, and wilful false swearing in any such inquiry shall be perjury and shall be punishable as such.

SECTION 8. All contracts with the City or any public officer acting in behalf thereof, or for any of the Counties therein, or with any board, commission or corporation maintained wholly or in part from appropriations made by the City shall be subject to audit by and the approval of the Comptroller. If in any action to recover upon any claim, the amount claimed by the plaintiff exceeds that audited and settled by the Comptroller, no testimony shall be admitted to show a promise or agreement by any officer or employee of the City or of any of the Counties contained therein or by any board, commission or corporation maintained wholly or in part from appropriations made by the City, unless empowered by or under authority of this act to

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make such promise or agreement, to pay any larger sum than the amount so audited and allowed by the Comptroller.

The assent of the Comptroller shall be necessary to all agreements hereafter entered into for the acquisition by purchase of any real estate or interest therein when such an agreement involves an obligation to pay or an expenditure of any money of, or appropriated or to be raised by, the City.

SECTION 9. No action or special proceeding to enforce any money liability shall be prosecuted or maintained against the City or any of the counties therein or any officer, board, body, commission or corporation maintained wholly or in part from appropriations made by the City, unless it shall appear by and as an allegation in the complaint or necessary moving papers that at least thirty days have elapsed since the demand or claim upon which such action or special proceeding is founded was presented to the Comptroller for adjustment and that he has disallowed the same in whole or in part or has neglected or refused to make an adjustment or direct payment thereof for thirty days after such presentment; and, in the case of claims against the City or any of the counties therein or any officer, board, commission or corporation maintained wholly or in part from appropriations made by the City, accruing after the passage of this act, for damages for injuries to real or personal property or for the destruction thereof, no action thereon shall be maintained, unless commenced within one year after the cause of action therefor shall have accrued nor unless notice of intention to commence such action and of the time when and place where the damages were incurred or sustained, together with a verified statement showing in detail the property alleged to have been damaged or destroyed and the value thereof, shall have been filed with the Comptroller within six months after such cause of action shall have accrued.

SECTION 10. No offer, consent to, or confession of judgment or final order or decree in favor of or against the City or any officer, board, commission or corporation maintained in whole or in part by appropriations made by the City shall be of any force or effect unless previously approved in writing by the Comptroller.

SECTION 11. The Comptroller shall prescribe the forms of all corporate stock, bonds, bills, notes and other like obli-

gations, if any, of the City. He shall fix the times at which the same shall be payable severally and shall sign the same. He shall be charged with the duty of selling such obligations as the City shall issue and, except corporate stock, serial bonds, general fund bonds or assessment bonds which may be purchased for investment by the Board of Estimate and Apportionment for any sinking fund or by the Commissioner of Pension Funds, all such stock and bonds shall be sold by him to the highest bidder or bidders after advertisement for not less than ten days inviting proposals therefor. The Comptroller may reject any or all bids and may thereupon advertise for new proposals for any stock or bonds not sold, or may, after the rejection of any such bid, sell the whole or any part thereof at private sale for any price in excess of the price bid therefor in any proposal so rejected, but no sale of any corporate stock or bonds shall be made for less than par value and accrued interest.

SECTION 12. The Comptroller may issue on behalf of the City and sell from time to time short term obligations of the City to be known as "revenue bonds," "revenue bills," "special revenue bonds," (particular issues whereof may be denominated "tax notes"), and "corporate stock notes," in such form as may be prescribed by the Comptroller as follows:

(1) Revenue bonds and revenue bills in anticipation of the collection of taxes for the then current year, but the aggregate amount whereof at any time outstanding shall not exceed the amount of the unpaid taxes provided for in the tax levy for such year, to such an amount as may be necessary to meet expenditures, as they are required to be made under appropriations for the then current year, which bonds and bills shall be redeemed out of the proceeds of taxes in anticipation of the collection of which they are issued.

(2) Special revenue bonds (a) to meet expenditures duly authorized by the Board of Aldermen and the Board of Estimate and Apportionment acting conjointly, other than those provided for in the budget for the current year, and (b) to pay judgments, awards, and other liquidated liabilities of the City or of any of the counties therein, which shall be presently payable, made or established pursuant to law and not provided for in appropriations for the current year, all

of which special revenue bonds shall be provided for in and redeemed out of the tax levy for the year next succeeding the year of their issue.

(3) Corporate stock notes to provide for expenditures for public improvements to be financed out of the proceeds of corporate stock or serial bonds, the issue whereof shall have been authorized by the Board of Estimate and Apportionment or by the Board of Aldermen and the Board of Estimate and Apportionment, acting conjointly, as in such case may be required, which notes shall mature in one year or less, and upon maturity may be renewed until redeemed but shall be redeemed out of the proceeds of the sale of the corporate stock or serial bonds in anticipation of the sale whereof the notes shall have been issued.

SECTION 13. The Comptroller shall report to the Board of Aldermen within two months after the close of each calendar year upon the receipts and expenditures of public moneys during the preceding year, the different sources of receipts and the purposes of disbursements, the money borrowed on the credit of the City and the payments made on account of the City's obligations and generally upon the condition of the finances of the City.

SECTION 14. The Comptroller may appoint, and for cause to be stated in the *City Record* at pleasure remove, as many deputies and assistant deputies as may be authorized in the annual budget, and may authorize any or all of them to exercise such powers and perform such duties of the Comptroller as he may specify in written designations to be filed in the office of the Comptroller, the Mayor and the Chamberlain.

ARTICLE XIV

President of the Board of Aldermen

SECTION 1. The President of the Board of Aldermen shall as elsewhere provided be the presiding officer of the Board of Aldermen.

SECTION 2. Whenever there shall be a vacancy in the office of Mayor, or whenever by reason of disability or absence from the city the Mayor shall be prevented from attend-

ing to the duties of his office, the President of the Board of Aldermen shall act as Mayor and possess all of the powers and rights of the Mayor during such vacancy, disability or absence, except that the power of appointment to or removal from office shall not be exercised by him during the disability or absence of the Mayor, unless such disability or absence shall have continued for thirty days, nor the power of veto unless such disability or absence shall have continued for nine days.

ARTICLE XV

Borough Presidents

SECTION 1. Each borough President shall have an office in such public building of his borough as may be designated for such purpose by the Board of Estimate and Apportionment.

SECTION 2. He may appoint and at pleasure remove a Commissioner of Public Works of his borough who may exercise all of the administrative powers of borough president whether conferred upon the borough president by Section 3 of this Article or under authority of this Act, and who shall in case of the disability or absence from the City of the borough president discharge all of the duties of the borough president, and who in case of a vacancy in the office of borough president shall discharge all such duties until the election of a successor borough president, as elsewhere in this Act provided.

SECTION 3. Subject to and pending the exercise by the Board of Estimate and Apportionment of the powers enumerated in Subdivision (6) of Section 1 of Article IX of this Act, and the exercise by the Board of Aldermen and the Board of Estimate and Apportionment, acting conjointly, of the powers enumerated in Subdivision (6) of Section 1 of Article X, each borough president shall have cognizance and control within the borough for which he shall have been elected:

1. Of the work of grading, curbing, flagging, paving, repaving, resurfacing, repairing, guttering and otherwise constructing or altering streets and public roads, and the

Be Post's admin. powers can be stripped, leaving him only a member of the Bd. of Ald.

laying of cross walks and the relaying of all pavements removed or opened for any cause.

2. Of the removal of encumbrances from streets and roads of his borough.

3. Of the placing of all signs indicating the names of streets and other public places.

4. Of the laying and relaying of surface railway tracks in any public street or road, of the form of rail to be used, the character of the roadbed or substructure and the method of construction of such surface railway and the restoration of the pavement or surface.

5. Of the issue of all permits for the temporary use or opening of streets and for the construction of vaults under sidewalks

6. Of the construction and maintenance of all bridges, viaducts and tunnels within his borough which form portions of highways thereof, except such bridges, viaducts and tunnels as cross over or under navigable waters.

7. Of the making of plans for the drainage of the borough, the construction of sewers, when duly authorized as in this Act provided, and the management, care and maintenance of the sewer and drainage system of the borough and the licensing of cisterns and cesspools.

8. Of the construction, repair, maintenance and cleaning of public buildings in his borough occupied by officers, departments, boards, commissions and other municipal, borough and county authorities.

9. Of the location, establishment, erection, maintenance and care of public baths, day nurseries, comfort stations and other authorized establishments devoted exclusively to the comfort, entertainment or recreation of the inhabitants of his borough.

10. Of the filling of sunken lots, the fencing of vacant lots and the digging down of lots.

ARTICLE XVI

Departments, Their Officers and Employees

SECTION 1. The following are established as administrative departments of the City, and shall not be abolished but

shall be maintained as separate departments subject only to the provisions of Section 14 of Article IV:

City Treasury;
Law Department;
Police Department;
Department of Pensions;
Department of Taxes;
Municipal Civil Service Commission.

Each of said departments and every other department and every office not subject to any department that may be established by or as permitted by this Act, whether of the City or any borough or county therein, shall have its own chief executive officer who shall be appointed and may be removed and, until he shall die, resign or be removed or his office shall become vacant otherwise, shall be charged with duties and possess powers and functions as in this Act provided or such powers and functions, consistent with the provisions of this Act, as the Board of Estimate and Apportionment may prescribe.

SECTION 2. The chief executive officers of the departments above named shall be the following, respectively:

Of the City Treasury, the Chamberlain;
Of the Law Department, the Corporation Counsel;
Of the Police Department, the Police Commissioner;
Of the Department of Pensions, the Commissioner of Pension Funds;
Of the Department of Taxes, the Commissioner of Taxes;
Of the Municipal Civil Service Commission, the President of the Municipal Civil Service Commission.

SECTION 3. Each chief executive officer of a department or office not subject to any department is authorized to and shall appoint and may at pleasure remove at least one deputy or assistant (who if there be more than one shall be known as the "First" Deputy or Assistant), who during the absence from the City or the disability of such chief executive officer or of a vacancy in his office shall exercise his powers and functions until the Mayor shall appoint his successor or an acting successor but in any case of vacancy the Mayor

shall appoint a permanent chief executive officer within sixty days from the occurrence of such vacancy except as otherwise provided in this Act. Each chief executive officer shall have and, subject to the provisions of the Civil Service Law, may appoint such character and number of deputies or assistants and employees as may be authorized by the Board of Aldermen and the Board of Estimate and Apportionment, acting conjointly, and, except as otherwise provided in this Act or by general law, may at his pleasure remove any or all of the same; provided that no person holding a position in the classified municipal civil service subject to competitive examination shall be removed except upon charges nor until he has been given an opportunity to make defence thereto personally or in writing. The true grounds of removal of any such person in every case shall be entered forthwith upon the records of the department, office, board or commission of which he may be a subordinate and a copy of the charges and of his defense and of such record shall be filed with the Municipal Civil Service Commission with all possible expedition. Except as provided in the Civil Service Law, no person so removed shall be entitled to a judicial review of the proceedings for his removal by mandamus, certiorari or in any form of action or proceeding.

SECTION 4. Except as above provided with respect to first deputies or assistants, the number of officers (including additional deputies and assistants) and of employees of every office, board, department, bureau and commission shall always be such and such only as provision for shall be made in the budget for the current year.

SECTION 5. Except as otherwise provided in this Act, every office, board, department and commission shall maintain its principal office in the Borough of Manhattan and shall have such branches, bureaus and subdivisions and the officials of the office, board, department or commission and all of its branches, bureaus and subdivisions shall possess such powers and be charged with such duties as the Board of Estimate and Apportionment may prescribe as authorized by Subdivision (6) of Section 1 of Article IX, or as the Chief executive officer may prescribe under authority conferred by said Board.

Each of the Borough Presidents and the chief executive

officer of each department and of each office which is not subordinate to a department and the chief executive of every revenue-producing improvement, business or enterprise operated by the City shall, once in each calendar half-year, in every case prior to the first day of March or the first day of September, as the case may be, and at such other times as the Mayor may direct, make to him a report which shall exhibit fully and clearly the results of all of the operations of such department, office, improvement or enterprise, which, immediately upon the receipt whereof by the Mayor, shall be published in the *City Record*. All such officers shall when required by the Mayor furnish to him such information as he may require and in such form as he may prescribe and within such reasonable time as he may direct.

All such officers and the chief executive officer of each and every bureau of any department or office, except the Police Commissioner, the Corporation Counsel and bureaus of the Police and Law Departments, shall with all reasonable promptness furnish to any taxpayer desiring the same a true certified copy of any book, account or paper kept by such officer or by any office, board, department, bureau or commission of which he shall be chief executive officer or such part of any thereof as may be demanded, upon payment in advance of five cents for every one hundred words thereof by the person demanding the same. All such books, accounts and papers, except those of the Police and Law Departments, respectively, shall be open at all times to the inspection of any tax-payer, subject to reasonable regulations with respect to the time and manner of inspection, and in case such inspection shall be refused, such tax-payer on his sworn petition, describing such particular books, accounts and papers as he desires to inspect, may, upon notice of not less than twenty-four hours to the chief executive officer of the office, board, department, bureau or commission refusing inspection of the same, apply to any justice of the Supreme Court of any county in the City for an order directing that such inspection be permitted, and if the petitioner be entitled to such inspection under the provisions of this section, such justice shall make such order and therein shall specify the time and manner of such inspection. Such order may be enforced and refusal to obey the same punished as in the case of an order of mandamus.

ARTICLE XVII

The City Treasury

SECTION 1. The Chamberlain shall be the treasurer of the City and of each of the counties therein and of every office, board, commission and corporation, exercising under authority of law any public powers or functions in territory coincident with the City or in any territorial subdivision or subdivisions thereof and entitled by law to receive or disburse public revenues or monies although the same may not be such as are dealt with in this Act. All taxes, license-fees and other revenues and monies, which the City shall be entitled to collect or receive shall be paid into the City Treasury and except as otherwise expressly provided by general law, every officer or employee of the City or any county therein receiving any monies belonging to the City or any fees or emoluments under sanction of any law shall forthwith pay the same into the City Treasury and account therefor to the Chamberlain and to the Comptroller. The Chamberlain at all times shall be custodian of all monies belonging to the City but, except as he may be permitted to retain the same in his own custody by order of the Board of Estimate and Apportionment, shall deposit them in such banks and trust companies as may be designated by the Comptroller. He shall pay all warrants drawn upon the City Treasury as provided in Sec. 5 of Article XIII. He shall observe all such requirements and directions of the Comptroller as may be made or given as authorized by said Article XIII.

SECTION 2. The Chamberlain shall establish and maintain in addition to such other bureaus as the Board of Estimate and Apportionment may prescribe or authorize, the following bureaus, each of which shall have its own chief executive officer, to be appointed and at pleasure removed by the Chamberlain, and shall maintain an office in each of the boroughs of the City:

- (1) The Bureau of Taxes, which shall be charged with the collection of all taxes payable into the City Treasury, other than arrears of taxes, the chief executive officer whereof shall be and be called the "Receiver of Taxes;"

(2) The Bureau of Assessments and Arrears, which shall be charged with the collection of assessments for improvements and of arrears of taxes, assessments, water rents and arrearages of other ordinary city revenue, the chief executive officer whereof shall be called the "Collector of Assessments and Arrears;"

(3) The Bureau of City Revenue, which shall be charged with the collection of the interest, rents and other payments for the use of property, revenues derived from the sale of City property and from public markets, water rents, periodical payments which the City is entitled to receive under contract, and all other revenues periodically payable to the City, except such as are provided for in Subdivision (4) of this Section, to which the City may be entitled, the chief executive officer whereof shall be called the "Collector of City Revenues;"

(4) The Bureau of License Collections, which shall be charged with the duty of receiving and receipting for license fees and payments of every description payable to the City as a condition of the issuance of or under any license which may be granted by the City or by any officer, board, department or other authority thereof, the chief executive officer whereof shall be and be called the "Collector of License Fees."

Subject to the exercise of the power of the Board of Estimate and Apportionment to prescribe additional duties for any of said bureaus, the Chamberlain is empowered to define the powers and functions to be exercised by said bureaus, respectively.

ARTICLE XVIII

Law Department

SECTION 1. The Corporation Counsel shall be the attorney, counsel and legal adviser of the City, the Board of Aldermen, the Board of Estimate and Apportionment, and every officer, board, department, bureau and commission of the City and each of the boroughs and counties therein, except the office of Sheriff or of a District Attorney and no officer, board, commissioner or employee of the City, or of any bor-

ough or county therein except the Corporation Counsel, shall employ any attorney or counsel in any action or special proceeding or in connection with any legal matter with which the City or any such county is concerned or in which it is a party in interest, except that in actions or proceedings which affect the tenure of office, private rights or liberty of any officer or employee he may, if he so elect, be represented by other counsel, but (except as otherwise provided in this Act) at his own expense. No such officer, board, department, bureau or commission, except a Sheriff or District Attorney, shall be authorized to establish or have in or attached to his or its office or organization any bureau or office to discharge any of the duties or functions in this Article assigned to the Law Department, unless the same be a branch of the Law Department and under control of the Corporation Counsel and authorized to be maintained by the Board of Estimate and Apportionment. The Corporation Counsel may, when authorized so to do by the Board of Estimate and Apportionment, and if directed by said Board shall, employ special counsel to assist him in, or if the Board of Estimate and Apportionment shall so direct, to take exclusive control of, any action, proceeding or legal matter.

SECTION 2. The Corporation Counsel shall, in his discretion, institute, prosecute and defend actions and proceedings and appeals which involve the right of the City to property, revenues or moneys belonging to or claimed by it, to enforce the City ordinances and the laws of the State in the enforcement whereof the City has a direct or special interest and, as well, such actions, proceedings and appeals as the Board of Estimate and Apportionment may direct. Except as otherwise provided in this Act or by general law, he shall appear in behalf of the City in and have control of all actions, special and other legal proceedings, including tax-appeals, street and park opening and other assessment and condemnation proceedings, in which the City is a party or entitled to be represented. He may appear in any action or proceeding, civil or criminal, brought against any officer or employee of the City or any county therein by reason of any act or omission which upon investigation he shall deem to have occurred in the course of the due performance of duty. In the preparation and trial of any action or proceeding and

upon any appeal under his charge he may exercise the same authority and discretion as ordinarily are exercised by attorneys or counsel representing private clients.

SECTION 3. The Corporation Counsel shall not, without the authority of the Board of Estimate and Apportionment, compromise or settle any action or proceeding in which the City is interested nor confess or suffer or accept any confession of judgment against or in favor of the City without the approval of the Comptroller, provided that he may settle, and may confess or accept judgment for, any money demand for an amount not exceeding \$2,000, if the Comptroller in writing shall approve such action.

SECTION 4. The Corporation Counsel or an assistant or deputy Corporation Counsel shall prepare and approve as to form before their execution, all contracts, conveyances, leases, bonds and other legal instruments or papers required by any of the officers, boards, departments, bureaus or commissions of the City or any of the counties therein, except only the office of Sheriff or District Attorney. He shall establish in the Law Department, in addition to such other bureaus as may be authorized under the authority of this Act, (1) a bureau of street openings, (2) a bureau for the recovery of penalties and (3) a bureau for the collection of arrears of personal taxes each of which shall be in charge of an assistant designated by the Corporation Counsel and may define the powers and duties of such bureaus.

SECTION 5. Neither the Corporation Counsel nor any of his assistants shall practice law or appear as attorney or counsel in any court or matter otherwise than in the discharge of the duties of his office.

ARTICLE XIX

Police Department

SECTION 1. The Police Commissioner shall, at the time of his appointment be a citizen of the United States and a resident of the City and in case he shall cease to be either during his term of office, he shall *ipso facto* cease to be Commissioner. All deputy or assistant Commissioners shall

possess the same qualifications and be subject to the same disqualifications as the Commissioner. The Police Commissioner shall, unless sooner removed, hold office until his successor shall be appointed and shall have qualified. Whenever in the judgment of the Mayor or Governor the public interest shall so require, he may be removed from office by either, and shall be ineligible for reappointment thereto during the term of the Mayor then in office. Within ten days after any vacancy shall occur in the office of the Police Commissioner, the Mayor shall appoint a successor.

SECTION 2. The Commissioner always shall have direct control of the administration of the Police Department, and of the organization, disposition, direction and discipline of the police force; he shall be chargeable with and responsible for the discipline and efficiency of the force; he shall have power:

(1) To appoint such deputy or assistant commissioners as may be authorized by or under authority of this Act; to remove any such deputy or assistant at his pleasure; to define their duties; to delegate to them or any of them any of his powers except the power of making appointments, and to delegate one of them to act, during the absence or disability of the Commissioner, as the Acting Commissioner; but the Acting Commissioner shall not have the power to make appointments.

(2) To assign one of the inspectors or captains (or person holding equivalent rank under some other title) to act as Chief Inspector, and at pleasure to revoke such assignment; to invest the Chief Inspector with power to exercise actual command of the entire police force, and to delegate to him any of his powers except the power of making appointments.

(3) To assign from the captains (or persons holding equivalent rank under some other title) such number as may be authorized by the Board of Aldermen and the Board of Estimate and Apportionment, acting conjointly, to act as inspectors, and at his pleasure to revoke each such assignment.

(4) To detail as many members of the police force as may be determined by him to be necessary to serve as detec-

tives in such bureau or bureaus as he may establish, and to revoke each such detail.

(5) To make, revoke and change other assignments and details to duty, but, except as authorized by this Act or expressly required by law or by ordinance, no assignment or detail to special duty whatsoever shall be made or continued except in the proper interest of the police service, but nothing contained in this Act shall be deemed to prevent the establishment by ordinance of a separate Park police force or such other special force as may be created by ordinance to serve the peculiar requirements of some department of the city government; to grant and revoke leaves of absence.

(6) To distribute the powers and functions of the Department among the officials thereof; to make, alter and enforce rules and orders for the conduct and discipline of the police force and the management of the Department; to limit and define the duties of the members of the police force and by rule or order to regulate the exercise of any of the powers vested in him or in any of his subordinates.

Subject to the other provisions of this Act the Commissioner also shall have power:

(7) To appoint, remove and to suspend from pay or duty, or both, and to retire members of the police force.

No person shall be appointed to or shall be a member of said force who shall not be a citizen of the United States and a resident of the City or shall have been convicted of a felony, but persons of especial skill and experience who are not residents of the City may be appointed solely for duty in the detective bureau or as detectives. No person under twenty-six or over thirty-one years of age shall hereafter be appointed a member of the police force; nor shall any permanent appointment be made unless the appointee shall have served a probationary period of at least three months in the police force under provisional appointment. No person shall continue to be a member of the force after attaining the age of sixty-five years, but any such person and any person of unsound mind may be removed from the force by the Commissioner or retired by order of the Commissioner or, if required by this Act, by order of the Board of Pension Fund Trustees. No person who has been lawfully dismissed from the police force shall be reappointed to any position therein or in the Police Department.

8. To establish ranks and grades in the police force, assign titles and designations thereto and to make promotions of and award honors to members of the force.

9. To prescribe the uniforms, shields, insignia and weapons of the police force and the wearing, display and use thereof.

10. To detail Members of the police force to attendance upon courts and, if and as authorized by or under authority of this Act, to the service of other departments, boards and commissions and in public offices; at pleasure to appoint and remove special patrolmen for any purpose authorized by law or ordinance and to make rules regulating the performance of their duties.

11. To establish, maintain and discontinue station-houses, central stations and police headquarters, fix the boundaries of precincts, establish, maintain and abolish marine, mounted and automobile patrols and within the limits and, upon the conditions of appropriations therefor, provide such stations, headquarters and patrols with equipment.

12. To offer rewards out of any unexpended appropriation therefor for information leading to the detection, arrest or conviction of persons guilty of felonies and to pay such rewards to persons entitled thereto.

13. To direct, control, restrict and regulate pedestrian, animal and vehicular traffic of every kind in streets, parks and other public places and, subject to the exercise of the powers of the Board of Estimate and Apportionment, to make and publish regulations with respect thereto; to issue permits for street parades and processions and for the carrying of firearms in the City.

14. To exercise supervision over, to inspect and to require reports from pawnbrokers, street-venders, dealers in and custodians of junk and all forms of second-hand articles and merchandise, reports from hotels, boarding-houses and intelligence offices, places of public amusement or exhibition and persons or places having or required by law or ordinance to have licenses or permits.

15. To make such inquiries as may be necessary to the proper performance of his duties or the duties of the police department or force and for that purpose to call and examine

witnesses, to delegate such power, by written delegation filed in the office of the Mayor and in his own office to any deputy or assistant commissioner; to issue subpoenas which shall be attested in the name of the Commissioner. The Commissioner, each deputy or assistant commissioner, the chief-clerk of the Police Department, if any, and such other clerks and officials of the department and members of the police force as may be authorized by ordinance shall have power to administer oaths and affirmations in matters pertaining to the duties of the department or necessary in connection therewith.

SECTION 3. Any member of the force, while assigned or detailed pursuant to subdivisions (2), (3), (4) or (5) of Section 2, shall retain his rank or grade in the force and shall be eligible to promotion as if serving in the uniformed force, and the time during which he may serve on any such assignment or detail shall count for all purposes as if he had so served in his rank or grade in the uniformed force.

Each inspector or captain (or person holding equivalent rank under some other title) shall be chargeable with and responsible for the efficiency and discipline of the force under his command.

SECTION 4. The Commissioner, every deputy or assistant commissioner and all officers and members of the police force shall enforce all laws and ordinances with respect to felonies and misdemeanors, preserve the public peace and order, suppress riots, mobs and insurrections, disperse unlawful and dangerous assemblages and assemblages which obstruct the free use or passage of streets, parks and other public places, prevent crime, detect and arrest offenders, protect personal and property rights, suppress nuisances, mendicancy, begging and vice, co-operate with the Fire Department and the health authorities of the City in enforcing regulations with respect to fires and for safe-guarding the public health, protect, advise and assist immigrants, strangers and street-passengers, repress all disorderly conduct and practices, and generally perform, as the rules of the department or the orders of the Commissioner may require or authorize, the duties of the Commissioner and such duties as may be prescribed by ordinance.

SECTION 5. Members of the police force may arrest without warrant any person who shall commit, or attempt or threaten to commit in the presence or within view of such member any breach of peace, any offense or act prohibited by law or ordinance or shall resist or obstruct the lawful enforcement of any law or ordinance or of any regulation or order made under authority thereof. They shall possess throughout the State all of the common-law and statutory powers of constables, except with respect to service of civil process, and any warrant for search or arrest issued by any magistrate within the State may be executed anywhere within the State by any member of the police force. No person other than a member of the police force shall serve any criminal process within the City under authority of this Act or of any authority conferred by the City.

SECTION 6. No member of the police force shall be absent from duty, resign or withdraw from the force except by authority of the Commissioner and any attempt so to resign or withdraw shall be without effect and may be punished as conduct injurious to the public peace and welfare.

SECTION 7. Any member of the police force who shall be found guilty of absence without leave, failure of duty by reason of negligence or inefficiency, neglect or violation of orders or rules or other breach of discipline, immoral conduct or conduct unbecoming an officer or injurious to the public peace or welfare may be punished by reprimand, forfeiture of pay or suspension from pay and duty or by dismissal from the force. The Board of Aldermen shall provide by ordinance regulations with respect to the preferring of charges, the places of trials and the official or officials before whom trials shall take place, and shall define the powers and duties of the Commissioner with respect to the making of rules regulating the investigation of offenses, the procedure at trials and the imposition of punishment and the degree of punishment to be imposed for particular offenses or classes of offenses and shall prescribe the proceedings, if any, that may be taken to review orders imposing punishment but no proceeding shall be authorized to be or shall be entertained by any court by writ of certiorari or otherwise to review any order or decision made pursuant to the provisions of this Act or of any ordinance authorized hereby

except only orders of dismissal from the force or orders suspending the pay of members of the force for more than thirty days. Pending action by the Board of Aldermen, the regulations and rules of the department regarding any of the subjects last above-mentioned in effect at the date of the taking effect of this Act shall remain in force except to the extent, if any, that the same may be inconsistent with the provisions of this Article.

SECTION 8. The Commissioner and such superior officer or officers of the police force as he may designate in writing shall have power to suspend any member of the police force from pay and duty or either pending the trial of charges, but no suspension by anyone other than the Commissioner unless approved in writing by the Commissioner shall continue in force for more than one week, and any suspension from pay shall be subject to confirmation in whole or in part by the decision rendered upon the trial of such charges.

SECTION 9. No officer or employee of the Police Department and no member of the police force shall be liable to military or jury duty or, while on duty, to arrest on civil process or to subpoena in any civil action or proceeding.

SECTION 10. The Comptroller may authorize and in that event the Chamberlain shall pay over to the Police Commissioner from time to time, but only upon the written requisition of the Commissioner approved in writing by the Mayor, portions of any unexpended appropriation for contingent expenses of the Police Department not exceeding ten thousand dollars at any one time nor more than ten thousand dollars in excess of the amounts already paid over for which he shall have accounted to the Comptroller and transmitted vouchers evidencing his disbursements.

SECTION 11. The police force as now constituted and the rules now governing the same are continued subject to the provisions of this Act and of ordinances adopted under authority hereof and consistent herewith.

ARTICLE XX

(NOTE—The following article, dealing with the Fire Department was prepared in consequence of counsel's understanding that certain members of the Commission were of the opinion that the Fire Department should have the same status as the Police Department. Although counsel now understands that he was in error in so understanding, the article is retained for such use, if any, as the Commission may choose to make of it.)

Fire Department

SECTION 1. The Fire Commissioner shall, at the time of his appointment, be a citizen of the United States and a resident of the City and in case he shall cease to be either during his term of office, he shall *ipso facto* cease to be Commissioner. All deputy or assistant Commissioners shall possess the same qualifications and be subject to the same disqualifications as the Commissioner.

SECTION 2. The Commissioner shall have direct control of the administration of the Fire Department and of the organization, disposition, direction and discipline of the fire force and, subject to the provisions of this Article and to the exercise of the powers of the Board of Estimate and Apportionment conferred by Section 1 of Article IX, of the organization of the Fire Department and the distribution of powers and functions among the officials thereof. Subject to the provisions of this Article and to the exercise of its powers by the Board of Aldermen, he may make, alter and enforce rules and orders for the conduct and discipline of the fire force, the management of the department and by rule or order may regulate the exercise of the powers vested in him or in any of his subordinates. He shall be charged with the custody and care of the property and equipment used by the department and shall prescribe the uniforms, shields and insignia of the fire force and the wearing, display and use thereof.

Except as otherwise provided in this Act, the Commissioner shall also have power:

1. To appoint, remove, relieve or suspend from duty or pay or both and to retire members of the fire force. No

person shall be appointed to or shall be a member of said force who shall not be a citizen of the United States and a resident of the City or who shall have been convicted of a felony. No person under twenty-one or over thirty years of age shall hereafter be appointed a member of the fire force; nor shall any permanent appointment be made unless the appointee shall have served under provisional appointment a probationary period of at least three months in the fire force. No person shall continue to be a member of the force after attaining the age of sixty years, but any such person and any person of unsound mind may be removed from the force by the Commissioner or retired by order of the Commissioner or, if required by this Act, by order of the Board of Pension Fund Trustees. No person who has been lawfully dismissed from the fire force shall be reappointed to any position therein or in the Fire Department.

2. To establish, maintain and discontinue such fire-houses now belonging to the City and such headquarters as may be authorized as provided in this Act and, within the limits and upon the conditions of appropriations therefor, provide such fire-houses, headquarters and fire force with equipment.

3. To make, revoke and change assignments to duty of members of the fire-force.

4. To establish ranks and grades in the fire force, to assign titles and designations thereto and to make promotions of and award honors to members of the fire force, all in accordance with such regulations as may be established by ordinance.

5. To take such measures, not inconsistent with law or ordinance, as in his judgment may be necessary to extinguish, control and to prevent fires in the City and danger to life or property therefrom and for any such purpose to order or authorize any particular building or buildings which shall be on fire or likely to take fire or convey fire to other buildings to be destroyed or wholly or partially demolished.

6. To cause fire to be extinguished on any vessel, dock, wharf, pier or other structure within or adjacent to the Port of New York and for that purpose to prevent any vessel, vehicle or person from approaching such fire or remaining in the vicinity thereof.

7. If in his judgment an emergency requires or justifies such action, to cause any such portion of the fire-force and fire-equipment of the City as in his opinion may in the circumstances be permitted to be so employed with due regard to the safety and interests of the City to assist in the extinguishment of fire in any territory outside of but in the immediate neighborhood of the City, upon such terms and conditions, if any, as he may prescribe and in like emergency to procure similar aid from fire departments located in any such territory.

8. (a) To cause any place (which term for the purposes of this section shall be taken to comprehend also buildings, structures, vessels, enclosures and premises of all descriptions) within the jurisdiction of the City to be inspected by any person or persons under his authority and for that purpose to enter or to authorize any such person or persons to enter any such place at any reasonable time.

(b) To order in writing the remedying of any condition found to exist in or about any such place in violation of law or ordinance or any rule or regulation made as authorized thereby with respect to fires or the prevention thereof, the installation or maintenance of any automatic or other fire alarm or fire-extinguishing system in any such place, or safe and adequate means of exit therefrom;

(c) To order any such place, if in his opinion it be so inadequately protected against fire-perils as to be a menace to life or property, to be vacated and to cause such proceedings to be taken as may be authorized by law or ordinance for its condemnation, removal or destruction.

(d) To order periodical performance of fire-drills and practice in the use of exits, alarms, extinguishers and prevention and extinguishing systems in any place in the city where numbers of persons work, live or congregate.

9. To enforce or cause to be enforced all laws and ordinances and all rules, regulations and orders made as authorized hereby or under authority of this Act with respect to any matter in this Section above-mentioned or with respect to the storage, sale, transportation, use, removal or destruction of explosives, combustibles, chemicals or other substances which may give rise to fire or explosions.

10. To suppress arson and to investigate or cause to be investigated the origin, causes, management and circum-

stances of fires, suspected incendiarism or the violation of any law, ordinance, rule, regulation or order which the Commissioner may be authorized to enforce or cause to be enforced.

SECTION 3. For the purpose of making any investigation authorized by Subdivision 10 of Section 2 of this Article, the Commissioner, the First Deputy or First Assistant Fire Commissioner, the Chief of the Bureau of Fire Prevention, if any, and the principal deputy or assistant of such Chief of bureau are and each of them is empowered to issue subpoenas (to be attested in the name of the Commissioner) and thereby to compel the attendance of witnesses and the production at any hearing had for the purposes of such investigation of books, records, papers and other articles deemed pertinent to the inquiry, to administer oaths and affirmations, to examine witnesses or to cause them to be examined by counsel and any false swearing under any such oath or affirmation shall be perjury and punishable as such. In the event of non-compliance with any subpoena or of refusal to be sworn or to testify or to answer any question propounded to any witness, application may be made to any justice of the Supreme Court for an order compelling the witness or proposed witness to obey the subpoena or submit to be sworn or to testify or to answer any such question and such justice, in case he shall decide that the person in question has not the constitutional right to refuse to appear, produce such evidence, be sworn or testify as the case may be or to answer any question which he shall decide to be pertinent to the inquiry, shall order such person to appear, be sworn, testify or answer each such pertinent question, as the case may require, and in event of further refusal may punish such person for contempt in the same manner and to the same extent as if such person had been subpoenaed as a witness in a civil action tried before such justice and a like order or direction had been made or given by him during the course of such trial and had not been obeyed; but no testimony or evidence obtained as aforesaid shall be received or offered in evidence upon the trial of any criminal action.

SECTION 4. The Commissioner, his deputies or assistants, and all of the officers and members of the fire force shall be peace officers and may exercise the powers thereof

with respect to violations or attempted violations of any laws, ordinances or authorized rules, regulations or orders which, as provided in this Article, the Commissioner is empowered to enforce or to cause to be enforced but not otherwise.

SECTION 5. No member of the fire force shall be absent from duty, resign or withdraw from the force except by authority of the Commissioner and any attempt so to resign or withdraw shall be without effect and may be punished as a breach of discipline and conduct injurious to the public welfare.

SECTION 6. Any member of the fire force who shall be found guilty of absence without leave, failure of duty by reason of negligence or inefficiency, neglect or violation of orders or rules or other breach of discipline, immoral or unbecoming conduct or conduct injurious to the public welfare may be punished by reprimand, forfeiture of pay, suspension from pay and duty or dismissal from the force. The Board of Aldermen shall provide by ordinance regulations with respect to the preferring of charges, the places of trials, the official or officials before whom trials shall take place, and shall define the powers and duties of the Commissioner with respect to the making of rules regulating the investigation of offenses, the procedure at trials, the imposition of punishment and the degrees of punishment to be imposed for particular offenses or classes of offenses and shall prescribe the proceedings, if any, that may be taken to review orders imposing punishment, but no proceeding shall be authorized to be or shall be entertained by any court by writ of certiorari or otherwise to review any order or decision made pursuant to the provisions of this Act or of any ordinance authorized hereby except only orders of dismissal from the force or orders suspending the pay of members of the force for more than thirty days. Pending action by the Board of Aldermen, the rules of the department regarding any of the subjects last above-mentioned in effect when this Act shall come into force shall remain in force except to the extent, if any, that the same may be inconsistent with the provisions of this Act.

SECTION 7. The Commissioner and any chief of department or bureau shall have power to suspend any member

of the fire force who shall be his subordinate from pay or duty or both pending the trial of charges, but no suspension by anyone other than the Commissioner, unless approved in writing by the Commissioner, shall continue in force for more than one week, and any suspension from pay shall be subject to confirmation in whole or in part by the decision rendered upon the trial of such charges.

SECTION 8. No officer or employee of the Fire Department and no member of the fire force shall be liable to military or jury duty, or, while on duty, to arrest on civil process or to subpoena in any civil action or proceeding.

SECTION 9. The fire force as now constituted and the rules governing the same are continued subject to the provisions of this Act and of ordinances adopted under authority hereof and consistent herewith.

ARTICLE XXI

Department of Pensions

(NOTE—*This entire Article is new and is a mere outline of plan, intended as a suggestion in very general form of ideas and purposes. If any such plan be adopted, the Article must be carefully revised and in connection with its revision it would be well to secure the written comments of the several present administrators of existing pension funds, of the Comptroller and also of Mr. Joseph Haag, who was Vice-Chairman and Secretary of the Commission on Pensions which reviewed the pension systems now in operation in the City and proposed the New York City Employees' Retirement System enacted into law as Chapter 427 of the Laws of 1920.*)

SECTION 1. The word "Commissioner" wherever used in this Article signifies the Commissioner of Pension Funds. The word "Board" signifies the Board of Pension Fund Trustees. The term "Advisory Committee" or the word "Committee" signifies the Pension Fund Advisory Committee. The word "participant" signifies a person who is a member or beneficiary of or who is actually entitled, by provision of any law, ordinance or contract or as the successor or representative of any other person to share, presently or upon the happening of some contingency or the

making of some election or otherwise, in any of the benefits of any of the pension, retirement, relief or life insurance systems or funds over which the Board of Pension Fund Trustees is conferred jurisdiction by this Article. The word "fund" signifies any such system or fund so subject to the jurisdiction of the Board. The word "Actuary" signifies the Actuary of Pension Funds.

SECTION 2. The Commissioner of Pension Funds shall be the chief administrative officer of the Department of Pensions and as such, subject to the rules which may be adopted by the Board of Pension Fund Trustees and to the exercise of its powers by the Board of Estimate and Apportionment, shall have direct control of the disposition, work and discipline of the employees of the department. He shall supervise and direct the keeping of the accounts and the making of the computations and reports required to be made by law, ordinance, or the orders of the Board, for the purposes of the duties of the Department. He shall have the custody of the property used by the Department and shall be charged with the care thereof. He shall be a member and Chairman of the Board, may call meetings thereof, of the Advisory Committee and of participants in any fund or funds, in the manner prescribed in the rules of the Board and as required by the provisions of this Article. Communications of and to the Board and decisions and orders of the Board shall be made through him.

SECTION 3. A Board of Pension Fund Trustees is hereby created to consist of seven members as follows, viz.: The Commissioner, the Mayor, the Comptroller, the Corporation Counsel, the Police Commissioner, the Fire Commissioner and the President or other chief officer of the Board of Education or such board or corporation as shall discharge the same or like functions. All of the members of the Board of Trustees shall serve without compensation as such trustees.

The Board of Pension Fund Trustees shall be known by that name, shall adopt rules for its own procedure and government and, subject to the provisions of this Act and to the exercise of the powers of the Board of Estimate and Apportionment and of the Board of Aldermen and the Board of Estimate and Apportionment, acting conjointly, conferred by this Act, shall prescribe the organization and the distribu-

tion of powers and duties among the officers and employees of the Department. Every action of the Board, other than such as shall concern its own organization and procedure, shall be taken by the affirmative vote of at least five members of the Board.

The Commissioner shall call the first meeting of the Board for some date not later than the fifteenth day of January, 1926.

SECTION 4. The Board of Pension Fund Trustees shall from and after January 1, 1926, be the trustees and managers of the Police Department Pension Fund, the Fire Department Relief Fund, the Fire Department Life Insurance Fund, the Teachers' Retirement Fund, the College of the City of New York Retirement Fund, the Hunter College Teachers' Retirement Fund, the Department of Street Cleaning Relief and Pension Fund, the Health Department Pension Fund, the New York City Employees Retirement System and of each and every other pension, retirement or relief or life-insurance fund or system existing in the City of New York under the jurisdiction of any officer or officers, board, employee or employees of the City or any officer or officers, board or body representing any corporation maintained in whole or in part by the City or any of the employees of any such corporation and of any such fund or system existing or which hereafter may be established for the maintenance whereof the City is responsible in whole or in part or to which it is under obligation, actually or contingently, to contribute. All monies, properties, bonds, securities, investments of any kind, revenues and incomes of any of said funds, in whose hands soever and wherever the same may be, shall be paid or turned over to the Commissioner on or before January 2, 1926, to be held and disposed of as directed by the Board, except that all monies, save such as by law are authorized to be held on deposit in any bank or trust-company to the credit of any fund, forthwith shall be deposited in the City Treasury to the credit of the fund to which the same shall belong. Except as expressly provided otherwise in this Act, the Board from and after said date shall possess with respect to each such fund all and every of the powers, rights, estates and interests and shall be charged with the duties

theretofore possessed by or imposed upon the trustee or trustees or upon the treasurer of such fund, except that the power and duty of the Board of Estimate and Apportionment to include in the budget and of said board or the Board of Aldermen to make appropriations for the service of any such fund shall reside in and be the duty of the Board of Aldermen and the Board of Estimate and Apportionment, acting conjointly, as in this Act provided with respect to the budget and appropriations generally.

SECTION 5. Subject to the power of the Board of Aldermen and the Board of Estimate and Apportionment, acting conjointly, to establish a consolidated pension and retirement system, each of said funds shall remain and be kept separate and distinct and the participants therein shall continue to have the same interests in and rights with respect to the benefits thereof as theretofore. Each such fund shall consist when turned over of the then existing capital and the accumulated income then belonging thereto and shall remain entitled to the same additions, deductions from pay and contributions and payments by the City to which the fund theretofore was entitled by law or ordinance and also to receive any forfeitures and penalties imposed upon or derived from members of the department or departments or other body or bodies for the benefit whereof the fund is established and to all gifts, as now provided by law; provided, however, that any contributions or payments which any such fund was entitled to receive or have paid into it out of particular revenues or receipts of the City or any county, borough or other subdivision shall no longer be paid specifically to or into the fund but the City shall retain the same and shall pay into such fund, out of its general revenues including the proceeds of taxes, such amounts as shall be the equivalent of the amounts so retained, and there shall be included in the annual budget for the service of each such fund not only the amounts which by existing law the City is under obligation to provide through the medium of tax levies, but also additional amounts equal to the amounts retained by the City as in this Section provided which otherwise would have been paid into or paid over to or for the use of such fund.

SECTION 6. The Board of Pension Fund Trustees shall have the exclusive power from and after January 1st, 1926:

(1) Subject to the limitations and conditions then imposed by the laws governing the investment of said funds, respectively, to invest each and all of said funds, to hold, purchase, sell, assign, transfer or otherwise realize upon or deal with any of the securities or other property in which any such fund may be invested and to invest and reinvest the proceeds of any such investments and the income and other monies belonging to such fund; and generally to manage each and all of said funds and to perform such functions as may be appropriate to the transaction of the business of any such fund.

(2) Annually to allow interest at a rate to be fixed by the Board on the mean amount of money belonging to each such fund and held in the City Treasury during the year ending June thirtieth, the amount of which interest shall be included in the budget next adopted and shall be paid into such fund by the Chamberlain, when the amount so payable shall have been audited by the Comptroller, out of the first monies available therefor realized from the collection of taxes during the next ensuing year.

(3) To appoint an Actuary of Pension Funds, who shall be the principal technical adviser of the Board, and who shall periodically, as required by the Board, make an actuarial investigation into the mortality, service and compensation experience of all participants in each fund and a valuation of the assets and liabilities thereof and report to the Board with respect thereto and perform such other duties as the Board shall prescribe and, having regard to whose advice the Board shall (1) adopt for any fund for which the same may be required mortality, service and other tables, (2) certify the rates of deduction from compensation computed to be necessary for the service of any fund as to which rates of deduction are not fixed by law and (c) certify the contributions which the City of New York shall be under obligation to make to any such fund.

SECTION 7. The Board shall annually not later than June first publish in the *City Record* a statement certified by the Actuary of the valuation of the assets and liabilities of each of the funds in its charge as of the preceding thirty-

first day of December, which shall contain a list of the investments of such fund, a statement of the amount of money on hand in or to the credit of the fund, the amount, if any, which the City shall be under obligation presently to pay into such fund and the amount, reduced to present valuation, which the City, as estimated, will be required to contribute to the fund to meet all deficiencies of assets and income which it shall be estimated will be occasioned by the satisfaction of the present and prospective obligations of the fund arising or to arise from commitments already undertaken by the fund.

SECTION 8. It shall be the duty of the Board, with all practicable expedition, and in any event prior to July first, 1927, to prepare and report to the Board of Aldermen and to the Board of Estimate and Apportionment the text of a proposed joint resolution, which shall provide for a single pension and retirement system, based upon actuarial principles, to which from the date of the establishment of such system all of the officers and employees of the City and of every county therein and of every office, board, commission or corporation maintained in whole or in part out of appropriations made by the City shall contribute through the medium of equitable deductions from pay and in the benefits whereof, to accrue from and after said date, all thereof who shall comply with the requirements of such system shall share; but such proposed joint resolution shall so provide for the classification of participants in such system and of the benefits thereof that the participants in any fund heretofore established and all others of the same class shall be entitled, as nearly as practicable, to benefits of at least as great aggregate value in proportion to their contributions thereto, service and rate of pay as those to which the participants in such existing fund shall have been entitled. Such proposed joint resolution shall not deprive any participant in any existing fund of any part of the accrued value of any benefit therefrom to which he shall be entitled actually or contingently at the date of the establishment of such consolidated system nor in case it shall provide for the merging of the funds heretofore established in such consolidated system shall it deprive any such participant of any part of the then existing security for the payment of such accrued benefits

unless fully equivalent and equally realizable security therefor shall be provided, but such proposed joint resolution may restrict the rights of all participants and of all officers and employees of the City and of any county therein and of every office, board, commission or corporation maintained in whole or in part out of appropriations made by the City with respect to any pension, annuity, allowance, privilege or other benefit or any option with respect to any thereof which shall accrue after the consolidated system shall become operative to such as shall be provided for in such proposed joint resolution and by the fund established thereby. Said proposed joint resolution shall not have any force or effect unless adopted by the Board of Aldermen and the Board of Estimate and Apportionment, conjointly. Any consolidated system the establishment of which hereafter may be provided for by the Board of Aldermen and the Board of Estimate and Apportionment, conjointly, shall be consistent with the foregoing provisions hereof with respect to such proposed joint resolution. Pending the establishment by the Board of Aldermen and the Board of Estimate and Apportionment, conjointly, of a consolidated pension and retirement system no further pension or retirement fund or systems shall be established by the City or by any authority thereof, nor shall the scope of an existing system be extended or the benefits thereof increased.

SECTION 9. All of the accounts, other than actuarial computations, of the Board and of each fund, including all receipts and disbursements of the Department and of each fund shall be audited by the Comptroller.

SECTION 10. The Chamberlain shall be the custodian of the several funds but shall hold the same subject to the control and direction of the Board. All payments shall be made by him upon vouchers which (1) shall be signed by the Commissioner or a deputy or assistant commissioner, under written authorization of the Commissioner filed with the Comptroller, and (2) shall be countersigned by the Comptroller.

SECTION 11. Prior to April 1, 1926, the Board shall adopt rules for the election prior to May 1, 1926, and every four years thereafter, by the participants in each of the existing funds next hereinafter named of a representative

upon and to be a member of a Pension Fund Advisory Committee which shall be composed of seven members, one of whom shall be elected by the participants in each of the following-named funds, acting severally, viz.: (1) the Police Department Pension Fund, (2) the Fire Department Relief Fund, (3) the Teachers' Retirement Fund, (4) the Street Cleaning Department Relief and Pension Fund, (5) the New York City Employees' Retirement System, (6) the Health Department Pension Fund and one of whom shall be elected, (7) jointly by the participants in the College of the City of New York Retirement Fund and the participants in the Hunter College Teachers' Retirement Fund. The Board shall also adopt rules for the filling of vacancies in said Committee, the organization and procedure of said Committee and the calling of meetings of the participants in the various funds under the jurisdiction of the Board and shall cause the first elections of members of the Committee, severally, to be held not later than May 1, 1926, and the first meeting of the Committee to be convened not later than June 1, 1926. In the event of the establishment of a consolidated pension and retirement system as contemplated by Section 8 of this Article, the joint resolution providing for the establishment thereof, shall provide for an Advisory Committee, elected by the participants in such consolidated system and representing to such extent as may be deemed practicable the several classes of such participants, which shall possess powers and functions with respect to such consolidated system substantially of the same nature as those in this Article provided to be possessed and exercised by the Advisory Committee.

SECTION 12. The Advisory Committee from time to time may designate a member of the Committee who, until the designation of a successor by the Committee, shall have the right to be notified of and to attend all meetings of the Board and to participate in its proceedings, but not to vote. Such designation may be changed at the pleasure of the Committee. The Committee at all reasonable times, to be determined by the Commissioner in the exercise of a reasonable discretion, may, through any subcommittee or subcommittees of its members appointed by it, examine the records of meetings and investments, the accounts and actuarial computations

and tables of the Board, either as a whole or with respect to a particular fund or funds, and report to the Board its recommendation of any corrections or changes which in the opinion of the Advisory Committee should be made in any thereof. It shall also have the right, if it so elect, but not more often than once in two years, to cause to be made by accountants to be designated by it, but at such time or times as the Commissioner may determine in the exercise of a reasonable discretion, an independent audit and examination of the accounts and investments and valuation of the assets and liabilities of any particular fund or funds and the Board of Estimate and Apportionment, in its discretion, may order the expense of such audit and valuation to be paid out of any appropriation available or which it may make available for the expenses of the Department of Pensions and in such case, upon its request so to do, the Comptroller shall sell an amount of special revenue bonds sufficient to, and from the proceeds thereof shall, reimburse such appropriation. Whenever any such independent audit or valuation shall have been made a written report of the result thereof shall be made with all practicable expedition and the Advisory Committee shall cause one original thereof forthwith to be filed with the Comptroller and the other to be delivered to the Commissioner. At the request of the Advisory Committee, made by resolution adopted by the affirmative vote of at least five of its members, the Commissioner shall call a meeting, in the manner provided by the rules of the Board, of all participants in any specified fund or funds in order that the Committee may make to such meeting any communication which it may deem advisable. The Board may in its discretion request the Advisory Committee to consider and advise the Board with respect to any specified subject or subjects concerning which the Board may contemplate the possibility of action by it and in such case the Committee with all practicable expedition shall consider the same and report to the Board its conclusions with respect thereto.

SECTION 13. Notwithstanding anything to the contrary contained in any law or in any ordinance of the City heretofore, or which hereafter may be passed, no chief executive officer of any office, board, division, department, commission or other officer or authority save only the Board of Pension

Fund Trustees shall have power to retire any officer or employee of the City or of any county therein or of any board, commission or corporation who upon or in consequence of retirement shall or may be entitled to any pension, annuity, retirement allowance or other benefit from any fund heretofore or hereafter established; provided, however, that the chief executive officer of any such office, division, board, department, commission or corporation or any member of the Board of Estimate and Apportionment may recommend to the Board the retirement of any such officer or employee and if under any law or valid ordinance applicable to the case, such officer or employee shall be entitled to be retired and shall have applied for retirement or such retirement is obligatory, the Board shall order such retirement and in any case in which under any law or any valid ordinance the retirement of any such officer or employee has heretofore been discretionary with any officer, board, department, commission or other authority, the Board shall have power, in its discretion, to order such retirement; but no person who shall have been lawfully dismissed upon charges from the service of the City or any county therein or any board, commission or corporation maintained in whole or in part out of appropriations made by the City, shall be entitled to any pension, annuity, retirement allowance or other benefit from any such fund, save only such right, if any, to withdraw accumulated deductions of pay as may be secured to him in such case by law or valid ordinance.

ARTICLE XXII

Department of Taxes

SECTION 1. The Commissioner of Taxes shall be the chief administrative officer of the Department of Taxes and as such, consistently with the provisions of this Act and subject to the exercise of the powers of the Board of Estimate and Apportionment, shall prescribe the duties of the First Assistant Commissioner and of the other assistant commissioners, if any, and control the organization, assignments to duty and discipline of the officers and employees of the Department and the operations thereof. Subject to the exercise of the powers of the Board of Aldermen conferred by Section 11 of Article XXVI and to the provisions of

this Act, the commissioner (a) may prescribe the duties of deputy tax-commissioners and the forms of returns to be made by deputy tax-commissioners, of records of assessed valuations and of assessment-rolls and of the entries to be made thereon, of applications for reduction or cancellation of assessments, of corrections of assessments and of assessment-rolls, of the tax-roll and the entries thereon, of the forms of advertisements required to be published in connection with the assessment and levy of taxes and all other details of procedure in the assessment and levy of taxes which are administrative or ministerial in their nature; (b) shall designate the newspapers, other than the *City Record*, in which and the dates upon which the advertisements aforesaid shall be published; and (c) shall maintain, complete and continue block and other maps as provided and to be disposed of as prescribed by Chapter 491 of the Laws of 1916 of the State of New York, and the Commissioner shall have power to employ and appoint such engineers and assistants as may be required for the prompt performance of said work. The Commissioner shall maintain the principal office of the Department of Taxes in the Borough of Manhattan and an office of the Department in each of the other boroughs of the City.

SECTION 2. The Commissioner or any assistant commissioner or deputy tax-commissioner shall have power:

1. To enter upon real property and into buildings and structures thereon at all reasonable times, in order to make such examination as is necessary to ascertain the value thereof or of the contents thereof for purposes of taxation;

2. To compel the attendance of witnesses upon any examinations in respect of the correction or cancellation of assessments;

3. To administer oaths or affirmations for that purpose. False swearing under any such oath or affirmation in any such examination shall be perjury and punishable as such.

SECTION 3. The Commissioner shall appoint, but in every case subject to confirmation by the Board of Estimate and Apportionment, eighty deputy tax-commissioners or such other number thereof as shall be authorized and provided for in the annual budget. In appointing deputy tax commissioners, the Commissioner shall apportion the appoint-

ments as nearly as practicable among the several boroughs in proportion to the populations thereof. No person shall be appointed or confirmed a deputy tax commissioner unless at the time of appointment he shall be and for at least one year shall have been an elector of the borough from which he shall be appointed.

SECTION 4. Prior to the first day of October in each year, commencing with the year 1926, the Commissioner shall appoint from among the whole number of the deputy tax commissioners at least one board for the correction of tax assessments (hereinafter called "tax-board") for each borough and he may appoint such number of tax-boards for any particular borough as he shall deem necessary for the prompt hearing and determination of applications for the correction of tax-assessments, as in this Article provided. Each such tax-board shall consist of three deputy tax commissioners. The Commissioner shall designate one thereof as the Chairman of the Board; but, notwithstanding the foregoing provisions of this Section the Commissioner may designate himself as a member of any of the tax-boards in any which event he shall appoint only two deputy tax-commissioners as members of any such tax-board and he shall be chairman of such board *ex officio*. The Commissioner at his pleasure may change the membership of any such board. All appointments to membership in any board shall be in writing and filed with the records of the Department.

SECTION 5. The Commissioner, any assistant commissioner, the deputy tax-commissioners and the employees of the Department of Taxes shall perform the duties and discharge the functions prescribed in Article XXVI of this Act. The Commissioner may authorize and direct any assistant commissioner to discharge any of the functions and to exercise any of the powers of a deputy tax commissioner and in such event such assistant commissioner shall be empowered so to do.

SECTION 6. Notwithstanding anything elsewhere contained in this Act, this Article XXII shall take effect at midnight on the thirty-first day of March, 1926, and the Board of Taxes and Assessments thereupon shall be deemed to be abolished and shall cease to exist.

ARTICLE XXIII

Municipal Civil Service Commission

SECTION 1. Prior to the first day of February, 1926, the Mayor shall appoint three suitable persons residents and electors of the City, not more than two of whom shall be members of the same political party, who shall constitute the Municipal Civil Service Commission. The members of the Commission so appointed shall hold office for three, six and nine years, respectively, as may be prescribed by the Mayor, from the first day of February, 1926. Prior to the fifteenth day of January preceding the expiration of the term of any member of the Commission, the Mayor shall appoint his successor for a full term of nine years from the ensuing first day of February. The Mayor may remove any of said commissioners upon charges made in writing of misconduct or inefficiency in the discharge of official duties or of personal dishonesty, immoral conduct or of other unfitness to hold office under the City, but only after full opportunity to the respondent to be heard and offer evidence in his defense, either in person or by counsel. The Mayor's decision and order upon any charges which he shall require any such commissioner to defend shall be published in full in the *City Record*. The Mayor shall fill vacancies in the membership of the Commission promptly as they occur. Any person appointed to fill a vacancy shall hold office during the unexpired portion of the term of his predecessor.

SECTION 2. The Commission shall elect its own chairman and appoint a Secretary, prescribe rules for its own procedure and may appoint such examiners as may be necessary to the discharge of the duties of the Commission prescribed by law and provision shall be made in the annual budget of the City for the necessary expenses of the Commission occasioned by the discharge of duties prescribed by law or ordinance. The determinations and orders of the Commission, except as otherwise provided by law, shall be made by the affirmative votes of not less than two of its members and only at meetings of the Commission duly called and held or at which all of the members of the Commission are present and consent to act.

SECTION 3. The Commission shall be charged with the duty and shall have power, to be exercised in the manner and upon the conditions prescribed by the Civil Service Law of the State and in all respects subject to and consistently with the provisions thereof, to adopt, amend, repeal and enforce rules for the classification of offices, positions and employments in the public service of the City and for appointments and promotions therein and examinations therefor and for the registration and selection of laborers for employment therein and generally to cause the Civil Service Law and the valid rules and regulations thereunder to be observed and enforced; and, notwithstanding anything whatsoever elsewhere contained in this Act, all appointments, promotions and changes of status in the public service of the City shall be made in the manner and upon the conditions, if any, prescribed in the Constitution of the State and the Civil Service Law and, subject thereto, by the provisions of this Act; and no officer of the City shall draw, sign or authorize the drawing, signing or issuing of any warrant for the payment of any salary or compensation to any person whose appointment or retention in the service of the City has not been and shall not be in accordance with the Civil Service Law and the valid rules and regulations in force thereunder.

SECTION 4. The Municipal Civil Service Commission shall have power, also, to make investigations concerning all or any matters touching the enforcement or effect of the Civil Service Law in or as it applies to the City, rules and regulations in force or proposed for adoption thereunder, any action of any examiner or other subordinate of the Commission or of any other person constituting or occasioning any violation or attempted or suspected violation of, or with regard to any matter arising in connection with the enforcement of, said law or rules or regulations thereunder. The Commission shall have power, by subpoena, attested in the name of the President of the Commission, to require the attendance of witnesses and the production of books and papers, including public records, at any such investigation and to examine such witnesses and for such purposes shall have all of the powers conferred by the Code of Civil Procedure upon a board or committee and shall be entitled to invoke and to the exercise of the power of any court of record in

the State to compel the attendance of witnesses, the production of books and papers, the submission of persons subpoenaed to testify to be sworn and to answer any questions pertinent to any authorized inquiry.

NOTE.

Counsel recommends that the Charter to be reported to the Legislature contain articles, similar to the foregoing, establishing and defining the powers and functions of all such other departments as in the opinion of the Commission should form parts of the City's departmental organization; but in view of the decision of the Commission to permit the establishment, abolition and consolidation of departments by the City authorities, it has been deemed best to postpone the preparation of such other articles until the Commission has determined whether it will pursue the policy of proposing initially a complete departmental organization. The following article (XXIV) has been drafted as embodying an expedient which may be adopted, if the Commission deem best, in lieu of embodying such articles in the Charter to be recommended.

ARTICLE XXIV

Interim Provision for the Administrative Organization of City and County Governments

The Board of Estimate and Apportionment of the City of New York, as the same shall be constituted after the thirty-first day of December, 1923, hereafter in this Section called the "Present Board" is hereby authorized and directed to provide by resolution or resolutions, to be adopted as provided in this Article prior to the first day of October, 1925, for the establishment on and after the first day of January, 1926, of such officers, boards, divisions, departments, bureaus and commissions of the City and of the several counties therein, other than officers, boards, departments, bureaus or commissions expressly provided for in this Act, as the Board of Estimate and Apportionment of the City is permitted by Subdivision 14 of Article IV and Section 1 of Article IX of this Act to establish on or after the first day of January, 1926, and as the present Board acting under authority of this Article may determine to establish.

This rule provides for the establishment of the Board of Estimate and Apportionment of the City of New York, as the same shall be constituted after the thirty-first day of December, 1923, hereafter in this Section called the "Present Board" is hereby authorized and directed to provide by resolution or resolutions, to be adopted as provided in this Article prior to the first day of October, 1925, for the establishment on and after the first day of January, 1926, of such officers, boards, divisions, departments, bureaus and commissions of the City and of the several counties therein, other than officers, boards, departments, bureaus or commissions expressly provided for in this Act, as the Board of Estimate and Apportionment of the City is permitted by Subdivision 14 of Article IV and Section 1 of Article IX of this Act to establish on or after the first day of January, 1926, and as the present Board acting under authority of this Article may determine to establish.

and, consistently with the provisions of this Act, to define the powers and relations of all officers, boards, divisions, departments, bureaus and commissions of the City or any county therein, including among others the officers, boards, departments, bureaus, and commissions established by this Act as and to the extent that the Board of Estimate and Apportionment of the City is authorized by this Act to define the same on or after the first day of January, 1926, and to make such transfers of powers to take effect on the first day of January, 1926, from any officer, board, division, department, bureau or commission which the present Board may so determine to continue or establish as the Board of Estimate and Apportionment of the City is authorized by this Act to make and to the extent that it is authorized to make the same on or after the first day of January, 1926; and the present Board, acting under authority of this Article, may add to, otherwise, or discontinue any of the powers or functions of any officer or of any board, department, bureau or commission, to be exercised on and after the first day of January, 1926, in the same manner and to the same extent as the Board of Estimate and Apportionment of the City is authorized by this Act to do on or after the first day of January, 1926, and to make such other provision, to take effect on or after the first day of January, 1926, with respect to the administrative organization of the City and county governments and the supervision, transacting and reporting of the business and affairs of the City and the counties therein that the Board of Estimate and Apportionment of the City is authorized to make on or after the first day of January, 1926; and the Comptroller of the City of New York after the thirtieth day of September, 1925, and prior to the first day of December, 1925, is likewise authorized and directed to prescribe such rules and regulations and to issue such instructions with respect to the conduct of business and accounts, reports, and all matters as to which the Comptroller by this Act is authorized to prescribe rules or regulations or to give instructions on or after the first day of January, 1926, as the Comptroller shall determine to be requisite for the administration of the Government and affairs of the City and of the counties therein on and after the first day of January, 1926; and, subject always to the exercise, on or after the first day of January, 1926, of

the powers of the Board of Estimate and Apportionment and of the Comptroller of the City, any and every action that may be taken prior to the first day of January, 1926, as authorized and directed by this Article, either by the present Board or by the Comptroller, shall have the same force and effect on and after the first day of January, 1926, that the same action would have had if it had been taken by the Board of Estimate and Apportionment or the Comptroller of the City forthwith upon the taking effect of this Act on the first day of January, 1926. Any action by the present Board as authorized by this Section shall be by not less than ten votes but shall not require the affirmative vote of the Mayor for its validity.

ARTICLE XXV

The Budget

SECTION 1. The Board of Estimate and Apportionment shall annually, between the first day of October and the first day of November, make a budget of the amounts estimated to be required for expenditure by the City during the next ensuing calendar year and of the estimated revenues thereof during such year from all sources whatever other than taxes to be levied.

SECTION 2. Each of the heads of offices, boards, departments, bureaus and commissions of the City and of each of the Counties therein shall at such date, not later than September tenth, as the Board of Estimate and Apportionment may direct, send to the Board a written estimate in duplicate of the probable amounts of expenditure and receipts of revenue of, or arising from the operations of, his office, board, department, bureau or commission for such year, specifying in detail the objects and sources thereof.

SECTION 3. The budget shall show, in as much detail as the Board of Estimate and Apportionment may deem practicable, the items of all appropriations and the conditions under which the same may be expended and as well the estimated revenues of the City other than from taxes to be levied for the ensuing year, including the estimated receipts of the general fund for the reduction of taxation or such

fund or account of like nature as shall be maintained and of the several sinking funds.

SECTION 4. The budget shall make provision for:

1. The interest upon the City debt to accrue during the next ensuing calendar year, and (a) such amounts of the principal of the funded debt of the City as are to fall due during said year and may not be refunded consistently with the provisions of this Act, provided that available provision for the payment of any such debt does not exist in the Sinking Fund, if any, out of which the same is payable; (b) all revenue bonds, if any, issued during the current year which, as estimated by the Comptroller, the taxes collected and collectible prior to the end of such year will not suffice to redeem; (c) all special revenue bonds and tax notes issued during the preceding calendar year, and all special revenue bonds and tax notes which shall not have been redeemed out of the appropriation therefor made in any preceding year, and (d) such further amounts, if any, of the principal of the City debt as the City shall have the right and the Board of Estimate and Apportionment may determine to pay during the ensuing year.

2. The quota of State taxes chargeable upon the City and the Counties therein.

3. The compensation of all officers and employees of the City and of each of the Counties therein; the compensation (including supplementary compensation) payable to justices of the Supreme Court, county judges, surrogates, judges of General Sessions and of the City Court, justices of Special Sessions and of Municipal Courts, district attorneys, magistrates and boards and commissions the compensation whereof is required to be paid by the City.

4. The cost of the administration, maintenance, and equipment of all of the offices, boards, departments, bureaus and commissions of the City and of the Counties therein, including the rent of buildings or offices not owned by the City, distinguishing between City expenses and expenses chargeable to said counties or any thereof, and the expenses of or incident to the administration of justice in and of maintaining the courts held within the City, the libraries thereof and the offices of the justices and judges thereof.

5. Expenses which the Board shall determine shall be

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borne by the City for the administration and maintenance of schools and other educational institutions and all other institutions the expenses whereof are to be borne in whole or in part by the City.

6. The expenses of or incident to all elections to be held in the City during the ensuing year, including among other things the registration of voters.

7. The cost of preparing and publishing the registry of voters and the records of assessed valuation of real estate and personal property and of all advertising required by law or ordinance and the cost of publishing the *City Record*.

8. The sums required for the discharge of the City's obligations to or for the service of pension funds.

9. The amount of all taxes and assessments for public or local improvements levied or made prior to the then current calendar year deemed by the Board to be uncollectible, so far as the same shall not have been effectively provided for in prior tax levies. All taxes and assessments which shall have been in default for more than three years after the same shall be due and payable shall for the purposes of this provision be deemed uncollectible.

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10. Other appropriations which the Board shall determine to make for municipal or local purposes, which may include an appropriation of not exceeding two million dollars, to be subject to subsequent allotment by the Board of Estimate and Apportionment, for the purpose of providing for emergencies for which provision is not made otherwise in the budget or for purposes not foreseen at the time of the adoption of the budget.

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SECTION 5. After the budget shall have been made up provisionally, but before it shall be finally approved by it, the Board of Estimate and Apportionment shall fix a time or times for hearing any residents or tax-payers of the City who may desire to be heard in regard thereto, and shall give notice of the date or dates so fixed by advertisement in the *City Record* and the Board shall afford all such residents and tax-payers as desire as ample an opportunity to be heard as shall be practicable. Thereafter the budget shall be completed by the Board of Estimate and Apportionment, and immediately thereafter and not later than November tenth shall be transmitted to the Board of Aldermen, together with one set of the departmental estimates provided for in Section 2

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of this Article. Thereafter the budget shall not be altered by the Board of Estimate and Apportionment except as hereinafter expressly provided.

SECTION 6. Simultaneously with the transmission to the Board of Aldermen of the budget as proposed by the Board of Estimate and Apportionment, it shall be published in the *City Record* and the Mayor forthwith shall call a special meeting of the Board of Aldermen to receive and consider it, which shall continue from day to day until final action shall be taken by it thereon. Except with respect to obligations imposed by law or contract, the Board of Aldermen may reject or reduce any of the items of the budget and its action in so doing shall be final subject to the veto of the Mayor as hereinafter provided. It also may increase any item or vary the conditions of its expenditure or insert any new item or items, but its action in so doing shall not be effective for any purpose unless accepted by the Board of Estimate and Apportionment. The Board of Aldermen shall finish its consideration of the budget and take final action thereon not later than the fifth day of December. If it shall not have taken such action on or prior to said date, it shall be deemed to have adopted the budget as transmitted to it by the Board of Estimate and Apportionment as modified by such reductions and rejections and (but subject to concurrence by the Board of Estimate and Apportionment), by such increases, insertions and changes in conditions of expenditure as shall have been made by it.

SECTION 7. Immediately thereupon if the Board of Aldermen shall have increased any item or items of the budget or inserted any new item or items or shall have changed the conditions of any of the expenditures, the budget as so modified shall be transmitted to the Board of Estimate and Apportionment, a special meeting whereof to receive and to consider the same shall forthwith be called by the Mayor. Said Board may agree to or reject any or all of such increases, insertions or changes but any thereof to which it shall not have agreed on or prior to the fifteenth day of December shall be deemed to have been rejected by it. At midnight of said last mentioned day the budget as agreed to by both said Boards or settled in accordance with the provisions of this Article shall be deemed to have been adopted by said

Boards subject to veto by the Mayor as next hereinafter provided.

SECTION 8. Each and every reduction, rejection, increase and change in the conditions of expenditure of any of the items and every new item contained in the budget as so agreed to or settled, as compared with the budget transmitted to the Board of Aldermen by the Board of Estimate and Apportionment, shall be subject to the veto of the Mayor to be exercised on or before December twentieth by a communication transmitted to the Board of Aldermen, a special meeting whereof he simultaneously shall call to receive and consider the same forthwith. Such veto may be over-ridden as to any particular item or items by not less than a three-fourths vote of the Board of Aldermen only, provided that such vote shall be taken on or prior to December twenty-fourth, and in that event the item or items as to which it is so over-ridden shall remain as they stood in the budget as agreed to or settled as provided in Sections 6 and 7 of this Article.

SECTION 9. On or prior to December thirtieth the budget as finally adopted or settled shall be certified by the Mayor and the President of the Board of Aldermen, and on or prior to said day shall be filed in the office of the Comptroller and thereupon the sums specified therein shall be deemed to be and shall be appropriated to the several objects and purposes therein set forth.

SECTION 10. On or prior to December thirty-first the budget as so finally adopted or settled shall be published in the *City Record*.

ARTICLE XXVI

Assessment and Levy of Taxes

SECTION 1. Commencing on the first day of April in the year 1926 and in each year thereafter, it shall be the duty of the deputy tax commissioners appointed as provided in Section 3 of Article XXII of this Act to ascertain and assess, under the supervision of the Commissioner of Taxes (in this Article elsewhere called the Commissioner) all taxable property of the class and in the districts assigned to them

severally by the Commissioner. With all practicable expedition and not later than such day as may be prescribed by the Commissioner, each deputy tax commissioner assigned to assess real estate shall make a return verified by his oath to the Commissioner containing a description of every separate parcel of taxable real estate embraced in his district, giving the street, lot, ward, town and map number together with the name, if ascertainable, of the owner thereof and of the sum for which in his judgment the same as it exists would sell in ordinary circumstances and also if improved of the sum for which it would so sell if wholly unimproved. Each deputy tax-commissioner assigned to assess personal property shall likewise make a return of all taxable personal property ascertained by him to be taxable and the name, if ascertainable, of the owner of each parcel or item thereof and the sum for which in his judgment each such parcel or item would sell and of such other information relative to such personal property as shall be prescribed by ordinance or, in the absence of ordinance, by the Commissioner. Each deputy tax-commissioner shall return such further details with respect to either real estate or personal property or the extent or nature of the examination made by him as the Commissioner may prescribe; provided, however, that in the event that the Board of Aldermen shall have provided by ordinance for differing bases of assessment for different classes of property, real or personal or both, the deputy tax commissioners shall assess and return the values of property included in such classes, respectively, upon and in accordance with the bases of assessment so provided.

SECTION 2. The taxable status of all persons and property assessable for taxation in the city shall become fixed, each year, on the first day of October of the year preceding the year in which taxes shall be levied thereon as provided in Section 10 of this Article.

SECTION 3. Before the records of assessed valuation shall be opened for public inspection as in this Section provided, a tax board appointed as provided in Section 4 of Article XXII, of which the Commissioner shall be a member and Chairman, having regard to the returns of the deputy tax commissioners, shall fix the valuations of property

in each borough and throughout the City and, if necessary, may so adjust the same that in its judgment a just and proportionately equal relation between the valuations of the several classes of property as between the boroughs and throughout the City as a whole will be established. The assessed valuations of property in each borough in the City returned by the deputy tax commissioners for such borough and so adjusted shall be entered under the direction of the Commissioner in "records of assessed valuations," for real estate and personal property, severally, in such borough which shall be completed prior to October first. The record of assessed valuations of real estate shall be open to public inspection during business hours from the first day of October until the fifteenth day of November, inclusive, and the record of assessed valuations of personal property shall be open from the first day of October until the first day of December, inclusive, except in each case upon Sundays and holidays. Notice of the fact that such records are and will be so open for inspection shall be published in the *City Record*, and also in such newspapers of general circulation published in the City as the Commissioner may designate, at least once in each calendar week or fraction of calendar week between October first and November fifteenth inclusive.

SECTION 4. The Commissioner from the whole number of deputy tax-commissioners shall designate for each borough one or more deputy tax commissioners who, between the first day of October in each year and the 15th day of November following as to real estate, and the first day of December following as to personal property, (a) shall receive applications for the revision or cancellation of assessments entered in the records of assessed valuation in such borough, (b) take testimony on each such application and reduce the same to writing, and (c) within ten days after taking such testimony return such application and testimony with his recommendation to the Commissioner, who shall thereupon refer the same to a tax-board appointed as provided in Section 4 of Article XXII for the borough in which the property in question has its *situs*. Such deputy tax-commissioners are authorized between the first day of October and the first day of December to administer oaths for the purpose of

taking testimony upon applications for revision or cancellation of assessments. A tax board or more than one such board may be designated by the Commissioner, to hear all applications of corporations for revision or cancellation of assessments, which applications shall be made to the Commissioner at the main office of the Department in the Borough of Manhattan. As to all other applications, the Commissioner shall prescribe the time and place of hearing thereof in the several boroughs, and give such public notice of such hearing in the *City Record* and in at least one such newspaper of general circulation published in each borough or, in default of any such paper published in a given borough, then in at least one such newspaper enjoying a general circulation in the borough in question as he may designate, and may make such rules and regulations as he may deem appropriate to the end that the taxpayers of each borough, other than corporations, may have a hearing and submit testimony in support of such applications in the borough in which their properties assessed may be situate respectively. All testimony taken by any tax-board upon any such application shall be reduced to writing and such testimony and all testimony taken thereon by any deputy tax-commissioner, as hereinabove provided, shall constitute part of the record of the assessment with respect to which the same shall have been taken. The decision of the proper tax board upon any application for revision or cancellation of any assessment shall be made by a majority of the members of such board and shall be rendered before the first day of February of the ensuing year.

SECTION 5. The Commissioner, at any time while the record of assessed valuation, either of real estate or of personal property, remains open for public inspection, after giving at least ten days previous notice to each party in interest, may increase the assessed valuation of any taxable property entered therein as in his judgment may be just or as may be necessary to comply with law or any valid ordinance and may add any real estate or the name of the owner of any personal property which may have been omitted from either such record when the same was opened and the assessed valuation of either as the case may require or may apportion the assessment of any real estate assessed in gross as between several interests therein, and the appropriate tax-board may,

at any time before the first day of February of the ensuing year, decrease the assessed valuation of any property real or personal as in its judgment may be just or as may be necessary to comply with any such law or ordinance; but valuations shall not be increased or added after such records are open for correction and review except upon notice as aforesaid given to the individual or corporation affected by such increase or addition on or before the fifteenth day of December. The individual or corporation so notified may apply for correction of any such increase or addition on or before the fifteenth day of January in the ensuing year with the same force and effect as if such application were made on or before the fifteenth day of November as to real property, or on or before the thirtieth day of November as to personal property.

SECTION 6. Beginning with the first day in October in each year, commencing with the year 1926, the Commissioner shall cause to be prepared from the Record of Assessed Valuation of Real Estate in the several boroughs tax assessment rolls, on which rolls the Commissioner shall cause to be set down opposite the several sums therein entered as the assessed valuations of real estate the sums in dollars and cents, rejecting fractions of a cent, which shall respectively equal in amount one per cent. of said assessed valuations of real estate, and said sums shall be payable on the second day of January next ensuing as a first installment of the tax upon the parcels of real estate, respectively. The Commissioner shall, as soon as said rolls are completed, annex to each thereof a certificate that the same is correct in accordance with the entries in said several records, and deliver the same and a true copy of each thereof on or before the fifteenth day of November to the Receiver of Taxes, at the same time notifying the Comptroller of the amount of such first installments of taxes appearing in each of said rolls in order that he may cause the proper sum to be charged to the Receiver of Taxes for collection. The Receiver of Taxes upon receiving said assessment rolls shall immediately cause the assessment rolls for each borough to be filed in his office in such borough, and shall thereupon give public notice for at least five days in the manner prescribed in Section 4 of this Article for the publication of notices of hearings, that said

assessment rolls have been delivered to him and that the first installment of the tax on real estate, amounting to one per cent. of the assessed value thereof as the same appears in said assessment rolls, will be due and payable at his office in such borough on the second day of January. If an assessment appearing on any such rolls, on which the first installment of taxes shall have been so paid, thereafter shall be reduced or cancelled, the excess of such payment over one per cent. of the corrected assessment, together with interest upon such excess at the rate of six per cent. per annum from the date of payment of such installment to the first day of the month succeeding the day when the second installment becomes due and payable, as hereinafter provided, shall be credited as a payment upon the second installment of the tax payable upon the real estate in question or, in the event that such excess together with such interest shall exceed the amount payable as the second installment of tax as finally assessed, the amount by which the former exceeds the latter shall be refunded by the Chamberlain and warrants therefore shall be prepared and delivered with all possible expedition. On the fifteenth day of February the originals of said assessment rolls of real estate shall be returned by the Receiver of Taxes to the Commissioner to enable the Commissioner to note therein such corrections of assessments therein as shall have been made as in this Article provided.

SECTION 7. Beginning with the first day of December in each year the Commissioner shall cause to be prepared from the Records of Assessed Valuations of Personal Estate in the several boroughs, assessment rolls of personal property for each of said several boroughs. On return to the Commissioner by the Receiver of Taxes of the assessment rolls of real estate on the fifteenth day of February, as provided in Section 6 of this Article, the Commissioner shall cause to be entered in such assessment rolls of real estate such corrections of assessments as shall have been made and shall, as soon as the rolls of real estate and personal property are completed, annex to each of said rolls his certificate that the same is correct in accordance with the final entries in said several records. The rolls so certified must on the first day in March, which is not a Saturday, Sunday or legal holiday,

and in any event not later than the third day of March, be delivered by the Commissioner to the Board of Aldermen.

SECTION 8. The assessment-rolls for real estate and personal estate so classified and so arranged with respect to columns and containing such entries as the Commissioner shall prescribe shall be sufficient to identify the property and persons assessed and to show each total assessed valuation. Real estate shall be described therein by the numbers by which such property is designated on the tax maps and in the annual record of assessed valuations and such numbers shall import into the assessment-roll of real estate any necessary identifying description shown by the tax maps. To the assessment of improved land there shall be added a statement of the value of the land, appraised as if unimproved. An omission of the name of the owner of real property or an error in the statement of his name shall not affect the validity of the assessment. No assessment of real property shall be deemed to be erroneous or illegal because of any division of title or ownership of the property assessed.

The entry of an assessment of personal property upon the assessment-roll shall contain at least: (1) the name of the owner; (2) a statement of the amount of the assessment. Names of owners shall be arranged alphabetically. Only a substantial error in the name of the owner shall render an assessment invalid.

SECTION 9. At least as early as the twenty-first day of February in each year, the Comptroller shall submit to the Board of Aldermen a statement setting forth (1) the amounts required by the City during the then current year for City purposes and for the proper purposes of each county included within the City (2) the amounts required by law or contract to be raised by tax in such year, and (3) an estimate of all of the probable receipts of the City during the then current year from sources other than the tax-levy thereupon to be made, with the assumed sources thereof and (4) the amounts included therein, if any, which are not applicable to the reduction of taxation and the Board of Aldermen, shall order and cause to be raised by tax in such year a sum not less than the difference between (a) the amount which is required to be provided for city and county purposes, including all amounts required by law or contract to

be raised by tax, and (b) the amount of such estimated receipts available for the reduction of taxation. The Board of Aldermen, in its discretion, may levy and order to be collected the sums to be raised for the purpose of defraying county salaries, expenses and charges, or any thereof, upon and out of the taxable property within said counties, severally, in such manner that each thereof shall bear the amounts incurred for its own proper county purposes, but the rate fixed by said Board to be levied upon any given class of property shall be uniform throughout the county to which it applies.

SECTION 10. The Board of Aldermen must meet each year, at noon on the first day in March which is not a Saturday, Sunday or legal holiday, and in any event not later than the third day of March, at its usual place of meeting in the Borough of Manhattan to receive the assessment rolls of real and personal property to be delivered to it as provided in Section 7 of this Article and to fix the annual tax rates. In determining such rates, said Board shall fix each rate in cents and hundredths of a cent upon each dollar of assessed valuation. The Board of Aldermen must cause (a) the assessment-rolls to be completed by setting down thereon (1) opposite the valuations of the several items of real and personal property, the respective sums, in dollars and cents, rejecting fractions of a cent, to be paid as taxes upon the same and (2) the aggregates of the assessed valuations of real property and personal property, severally in each borough, (b) a certificate setting forth such aggregate valuations, severally, to be transmitted forthwith to the Comptroller of the State and (c) the assessment rolls of each borough corrected and finally completed as required by this Act or fair copies thereof to be delivered to the Receiver of Taxes on or before the twenty-eighth day of March, with warrants annexed requiring him to collect so much of the several sums entered in said rolls as taxes to be paid as shall not already have been paid in accordance with the provisions of Section 6 of this Article.

SECTION 11. The Receiver of Taxes, immediately after he shall have received the assessment rolls so corrected and finally completed, shall give public notice for at least five days by publication, in the manner provided, as aforesaid

in Section 4 of this Article, that said assessment rolls have been delivered to him, and that all taxes will be due and payable at his office in said respective boroughs as below in this Section provided, which in said notice shall be specified, viz.:

All taxes upon personal property and upon special franchises shall be due and payable on the ensuing first day of May, and so much of the taxes upon real estate as shall in any case constitute the balance of such tax over the first installment of one per cent. of assessed value due and payable on the second day of January shall also be due and payable on the first day of May. In the event that the installment of the tax levied upon any particular parcel or item of taxable property payable as in this Article provided on the second day of January or on the first day of May shall not be paid during the month of January or the month of May, as the case may be, the Receiver of Taxes shall add thereto and there shall be collected and paid, with the amount of tax so levied on such installment interest at the rate of half of one per cent. for each month and for each fraction of a month that shall have elapsed from and after the first day of May or of January, as the case may be, upon which such tax or installment became payable until the day of payment thereof, provided that the same be paid within four months from the date upon which such installment became due and payable; but in the event that the same shall not be paid until after the expiration of such period of four months, the Receiver of Taxes shall add thereto and there shall be collected and paid with the amount of such tax or installment, in addition to such interest at the rate of half of one per cent. per month for such period of four months, interest to the date of payment of such tax or installment at the rate of one per cent. for each month and for each fraction of a month which shall have elapsed after the expiration of said period of four months. If any tax or installment of tax on real estate or any tax on personal property shall remain unpaid on the first day of January following the date upon which the same shall have become due and payable it shall be the duty of the Receiver of Taxes to charge and collect upon such tax or installment so unpaid, in addition to interest as provided in this section, a penalty of one per cent. of the amount of the taxes levied.

The Receiver of Taxes shall, from day to day as the same are collected, pay over all taxes, interest and penalties collected by him to the Chamberlain.

SECTION 12. If a sum in gross shall have been taxed upon any parcel of real estate and any person or corporation shall claim a divided part thereof or an undivided interest therein, the Commissioner of Taxes upon application of such person or corporation, may apportion the assessment of such parcel between the several interests shown to exist therein and in writing certify such apportionment to the Receiver of Taxes and such person or corporation may pay the tax upon the assessment apportioned to his or its interest.

SECTION 13. All taxes shall be liens upon and charges against the real estate affected thereby on the days and to the extent that they shall become due and payable as in this Article provided and not earlier and such taxes and all interest and penalties which shall accrue thereon shall remain such liens and charges until paid in full.

SECTION 14. The Board of Aldermen may enact by ordinance regulations, consistent with the provisions of this Act, of the preparation and correction of and additions to maps by the Department of Taxes, the assessment, levy or collection of taxes, the enforcement of liens for taxes upon real estate and proceedings for the recovery of taxes upon personal property and the conduct thereof and with respect to any matters as to which the Commissioner of Taxes is authorized by Section 1 of Article XXII to make rules subject to action by said Board and also to fix penalties for failure by any person to perform or assist in performing any duty prescribed by this Article or otherwise with respect to the levy, collection, or payment over of taxes or the making or correction of assessments or accounting for taxes collected.

SECTION 15. Nothing in this Act shall affect any valid exemptions from taxation created by law with respect to property, real or personal, or authorize the creation by the City of new or different exemptions therefrom.

SECTION 16. Notwithstanding anything elsewhere contained in this Act, the provisions of this Article XXVI shall

take effect on the first day of April, 1926, and not before. The provisions of law existing on December thirty-first, 1925, with respect to the levy, collection and payment of taxes and the making and correction of assessments therefor shall continue to apply to and govern the levy, collection and payment of taxes to be levied in March, 1926, and the making and correction of assessments therefor.

ARTICLE XXVII

Board of Review

SECTION 1. Prior to October 1, 1926, the Mayor shall appoint three persons, residents of the City, at least one of whom shall be an attorney at law who shall have regularly practiced in the City for at least five years, who shall constitute and be known as the Board of Review. The Mayor shall designate a member of the Board of Review who shall be an attorney at law qualified as above-provided to be the President thereof. The members of the Board of Review shall hold office for three, six and nine years, respectively, as may be prescribed by the Mayor, from the first day of October, 1926. On or before the first day of September, prior to the expiration of the term of any member of the Board of Review, the Mayor shall appoint his successor for a full term of nine years from the first day of October next ensuing. The Mayor may remove any of the members of said Board upon charges made in writing of misconduct or inefficiency in the discharge of official duties or of personal dishonesty, immoral conduct or of other unfitness to hold office under the City, but only after full opportunity to the respondent to be heard and offer evidence in his defense, either in person or by counsel. The Mayor's decision and order upon any charges which he shall require any such member of the Board to defend shall be published in full in the *City Record*. The Mayor shall fill vacancies in the membership of the Board promptly as they occur. Any person appointed to fill a vacancy shall hold office during the unexpired portion of the term of his predecessor.

SECTION 2. Such Board shall hear all applications for the revision or cancellation of assessments for taxes upon property in the City upon any of the grounds in Section 2 of this Article set forth, that may be presented to it, in writ-

ing or personally, by owners of property which shall have been assessed for taxes, provided that any such application shall first have been presented to and denied in whole or in part by a tax board as authorized in Article XXVI of this Act and that every such application shall be presented to or filed with the Board of Review not later than the thirtieth day of April of the year in which the tax board shall have so denied such application in whole or in part. The Board of Review shall have jurisdiction and power to review, on the merits, any decision of any tax board and the assessments sustained or corrected thereby upon the application of any such aggrieved party who shall have complied with the conditions prescribed in this section and to cancel or correct any assessment which is the subject of any such application, upon one or more of the following grounds and none other:

1. That the property assessed or some part thereof is exempt from taxation;
2. That the assessment is illegal otherwise;
3. That the assessment is erroneous by reason of over-valuation;
4. That the assessment, if of real estate, is erroneous by reason of inequality in that the valuation assessed is proportionately higher than the assessment of other real estate of the same class in the same section or on the tax-rolls of the City for the same year with the result that, in the opinion of the Board of Review, the aggrieved party will be required, by reason of such inequality to pay more than his just proportion of the aggregate tax.

SECTION 3. Any such aggrieved party may present his application to the Board of Review informally and without pleadings upon the record of the assessment of the property in question and such evidence, if any, as he may elect and in such case, if in its opinion the facts proved shall justify such action, the Board by order in writing may summarily cancel or reduce the assessment; otherwise it shall deny such application; but no appeal shall lie from any order made upon any such informal application.

SECTION 4. Any such aggrieved party may present to the Board of Review, within the period aforesaid, a formal application for the correction or cancellation of any assessment, whether such party shall have presented an

informal application therefor or such informal application shall have been denied in whole or in part or such party shall not have made any previous application therefor, by filing with the Board a verified petition in writing briefly setting forth the grounds of complaint, which must be one or more of the grounds enumerated in Section 2 of this Article, and the facts which the petitioner contends establish the same. In the event that an informal application for the same relief or any part thereof shall be pending and undecided, it shall be superseded by such formal application. With every such petition there shall be filed a bond or undertaking in favor of the City approved as to amount, form and the sufficiency of the security by the Commissioner of Taxes or the President of the Board of Review to secure the payment of such amount of tax, if any, as shall be found to be due by the Receiver of Taxes upon any assessment sustained or corrected in such proceeding or upon any reassessment ordered therein, and, if the assessment shall be sustained as made, such interest and penalties thereon as shall have accrued and such costs of and taxable disbursements of the proceeding as the Board of Review or any court upon appeal may finally direct. It shall not be necessary that the City or any public body or official shall answer or defend against such petition but the same shall in every case be deemed to be at issue and the allegations thereof must be established. The President of the Board of Review shall summarily set down said petition for hearing before the Board of Review forthwith or for the earliest practicable day and shall cause the petitioner and the Commissioner of Taxes to be notified personally or by mail of the time fixed therefor. At the time so fixed or as soon thereafter as the proceeding can be heard, the Board shall hear the petitioner and his evidence and shall try the merits of such application summarily upon the law, the record of the assessment in question and the facts, as they shall appear in evidence otherwise. The City may appear upon any such proceeding and defend the same either by the Commissioner of Taxes or a deputy tax collector authorized by him or by the Corporation Counsel, as the Commissioner of Taxes may elect. Such proceedings may be had and such evidence shall be admissible as might have been had or would have been admissible, but for this Article,

had the proceeding been tried in the Supreme Court upon a writ of certiorari and the return thereto as prescribed in the Tax Law, and the Board of Review, by vote of a majority of its members, shall confirm the assessment complained of or shall make such other order as might have been made by the Supreme Court upon such proceedings by certiorari.

Upon the making of any such order by the Board of Review or, if the same be appealed from, upon the making of a final order by any court or upon the making of a reassessment of the property in question if directed by the Board or any such Court, the assessment and tax-rolls shall, if they shall have been found to be erroneous, be corrected accordingly.

The Board of Aldermen may provide by ordinance, or in the absence of such ordinance the Board of Review may provide by rule, but in either case consistently with the provisions of this Act, for the procedure of and before the Board of Review with respect to any matters or details which are not provided for in this Article.

SECTION 5. An appeal may be taken by the petitioner or the City from the order entered by the Board of Review to the Appellate Division of the Supreme Court for the First Department, but in the case of an assessment of real estate to the Appellate Division of the Supreme Court for the department in which such real estate shall be situate. The record upon any such appeal shall be made and certified and the appeal shall be perfected in the same manner as appeals taken from orders entered in special proceedings of like nature at a special term of the Supreme Court, but in every such case notice of appeal shall be served by or upon the Corporation Counsel and the City shall be represented upon such appeal by him. Such appeal shall be heard and determined in like manner and with like effect as an appeal from an order entered upon a like proceeding in certiorari.

SECTION 6. In the event that it shall finally be determined that any assessment reviewed as in this Article provided is illegal or if upon correction thereof or a reassessment of the property in question directed by the Board of Review or by the final order of any court upon appeal it shall appear that the tax upon such property has been paid to an amount greater than was legal or shall be warranted

by such reassessment, the tax paid to the amount of such excess with interest upon such amount of excess from the date of payment shall be refunded in the manner provided in Section 296 of the Tax Law or in said Section as it may have been amended or by any provision of Statute then in force providing for such refunding which shall have superseded said Section.

SECTION 7. No action to vacate an assessment for taxes or to remove a cloud upon title by reason thereof or to enjoin the collection or proceedings for the collection of any tax or the sale of property or of a lien upon property taxed or to recover moneys paid for or on account of taxes and no certiorari to review a determination with respect to any assessment for taxes shall be maintained with respect to any assessment or upon any claim of invalidity in any assessment for taxes made with respect to property in the City after March thirty-first, 1926; but all parties aggrieved shall thereafter be restricted to the remedies provided in Article XXVI and in this Article.

ARTICLE XXVIII

Improvements, Assessments and Awards

(To be supplied)

ARTICLE XXIX

Eminent Domain

(To be supplied)

ARTICLE XXX

Miscellaneous Provisions

SECTION 1. As used in this Act, unless a different meaning be clearly indicated by the context:

1. The word, "City" means The City of New York;
2. The word, "Person" comprehends in meaning a natural person, a corporation, association, joint stock associa-

tion and co-partnership and the plural as well as the singular number;

3. The words, "now" and "existing" and any equivalent word or words shall be construed to refer to the condition existing at the time this Act shall take effect and the words "heretofore" and "hereafter" or any equivalent word or words shall be construed to refer to the time anterior or subsequent to the time when it shall take effect, as the case may require;

4. The word, "officer" means any elective officer, the heads of departments or offices not subordinate to any department, their deputies and assistants, the members of boards and commissions of the City or any county therein and such other persons in the service of the City or any of the counties therein as the Board of Estimate and Apportionment may designate as such. The words "employee" or "employees" comprehend every person employed by the City or any county therein other than officers.

5. The term "real estate" or "real property" or any equivalent term comprehends in meaning lands, improvements upon lands whether considered separately or as a part of the land, property other than land or appurtenances declared by general law to be real property, lands under water, the water of any lake, pond, stream or back-water, all easements and hereditaments, corporeal or incorporeal, and every estate, interest or right therein, including terms for years and liens by mortgage, judgment or otherwise.

6. The phrase "the time when (or "at which") this Act shall take effect" or any equivalent expression shall be construed to refer to the time when it shall become law by the Governor's approval or otherwise as provided in the constitution of the State; the phrase "the time when (or "at which") this Act shall come into force" or any equivalent expression shall be construed to refer to the first day of January, 1926, and to a time on said day prior to the performance of any act or the happening of any event.

SECTION 2. The College of the City of New York and Hunter College of the City of New York are hereby continued as distinct bodies corporate with the powers, organization, functions, obligations and limitations respectively, prescribed or provided for in the laws in force relative to

said Colleges, respectively, at the time when this Act shall come into force. The trustees and officers of each of said Colleges shall be appointed in the manner and for the terms and shall possess the powers and be subject to the duties in such laws provided; but no obligation shall rest upon the City to appropriate for the support of either of them any sum in excess of such amount as the Board of Aldermen and the Board of Estimate and Apportionment shall determine to include for the purpose in any annual budget.

SECTION 3. Courts of inferior local jurisdiction existing at the time this Act shall take effect, including the City Court, the Municipal Courts, the Court of Special Sessions and the City Magistrates' Courts shall continue to exist and each of said courts, the justices and magistrates thereof shall continue to possess the jurisdictions, powers, functions and duties then prescribed by law. The justices and magistrates of said courts shall be elected or appointed in the manner and receive the compensation so provided.

SECTION 4. The paper heretofore published known as the *City Record* shall continue to be published by or under contract with the City in such manner and under such management and supervision as the Board of Estimate and Apportionment may determine or authorize. Contracts for the publication thereof shall be such and shall contain such terms and conditions as the Board of Estimate and Apportionment shall determine or approve, but shall be let in the same manner as other City contracts for which no special provision is made by law or ordinance. The *City Record* shall contain all messages, budgets, statements, reports, lists, advertisements, notices and other official matters or information required by law or ordinance to be published by the City, any county therein or any officer, board, department, bureau or commission of any thereof and all such other matters of official concern to the City or any county therein or to any official, board, department, bureau or commission or corporation sustained in whole or in part out of appropriations made by the City as the Board of Estimate and Apportionment may direct to be published or as may be directed to be published by its authority.

SECTION 5. No expense shall be incurred, to be met either presently or in the future, by any officer, board, department,

commission or employee of the City or any county therein unless there shall be an unexpended balance in an appropriation authorized to be applied thereto sufficient to meet such expense at the time and no liability of the City shall result from any attempt to create the same in excess of the amount so appropriated and available to meet the same.

SECTION 6. No officer or employee of the City or any county therein shall be interested, directly or indirectly, as contracting party, partner, stockholder or otherwise in any purchase, lease, contract, business or work or the execution, performance or conduct thereof, the price, consideration or expense whereof is payable by the City or any such county or out of any assessment made by the City or under authority of any act of any board, officer or other City or county authority or in any sale or lease made by the City or at its instance or for taxes or assessments and any such officer or employee who shall knowingly be so interested, except by will or succession, shall be guilty of a misdemeanor, shall forfeit his office or employment and all of the pay and emoluments thereof and shall be disqualified to hold any office or employment under the City or any county therein. All contracts and transactions in which any officer or employee shall have any such interest shall at the election of the Board of Estimate and Apportionment be absolutely void or terminable as it may determine.

SECTION 7. Any officer or employee of the City or any county therein who shall give or promise or offer to give to any person any consideration whatsoever, actual or contingent, in consideration or upon condition of the nomination, election or appointment to any office or employment of the City or any county therein of any person or of the exercise or promise to exercise influence to procure any such nomination, election or employment shall be guilty of a misdemeanor and shall forfeit his office or employment and all of the pay and emoluments thereof and shall be disqualified to hold any office or employment under the City or any county therein.

SECTION 8. No officer or employee during his incumbency, shall (1) hold any other public office or employment, or position of emolument, federal, state or local or by virtue of appointment or designation by any court, except notary

public or commissioner of deeds, or (2) shall be nominated to an elective office, while holding any appointive office or employment, unless he shall decline such nomination within such time and in such manner as shall be limited by law for such declination, or (3) shall be an officer or member of any party or other political committee or association or a delegate, alternate to or member of any political convention, or (4) shall contribute, directly or indirectly to any party or political fund or association or, directly or indirectly, shall contribute to promote, defeat or modify any legislation or proposed legislation or if holding an appointive office or employment, appear before any legislative body, federal, state or local or any committee of any such body, except in obedience to a subpoena or a written or telegraphic request therefrom. Any person violating any of the provisions of this Section shall forfeit his office or employment and all of the pay and emoluments thereof.

SECTION 9. The appointment or reappointment to or retention in any office or department of the City or any county therein or in the police force, or fire force, of any person who is disqualified by reason of lawful dismissal upon charges or otherwise, if the officer making such appointment or any officer permitting such retention shall know or shall have had notice of such disqualification, shall constitute conclusive ground for the removal from office of the officer making such appointment or permitting such retention and any officer or employee of the City who shall audit, pay or direct or procure the payment of any compensation or emolument to any person so disqualified, if he shall know or have had notice of such disqualification, shall be personally liable to the City for all sums whatsoever which shall be so paid with interest from the dates of all such payments respectively.

SECTION 10. Every disqualification, forfeiture and penalty imposed or provided for in this Act shall be in addition to and not exclusive of any other penalty or punishment in such case prescribed by law.

SECTION 11. All officers, boards, commissions and employees are trustees of the properties, estates, rights and funds of the City to the extent that they shall manage or control or ought to manage or control the same and any person who shall pay or be under obligations to pay taxes to

the City is a *cestui que* trust with respect thereto and any co-trustee or *cestui que* trust, as against any such trustee or trustees, shall be entitled to and may enforce all of the rights and remedies provided by law for any co-trustee or *cestui que* trust and to maintain an action to prevent waste of or injury to any property, estate, interest, right or funds subject to such trust.

SECTION 12. The common seal of the City shall be of the form heretofore in use or of such other form and shall be kept in such custody as may be prescribed by the Board of Estimate and Apportionment and shall be used only by officers and upon conditions authorized, either specially or generally, by the Board of Estimate and Apportionment. Each department shall have a seal, which shall be the common seal of the City with the name of the department incorporated therein and its officials shall use the same whenever authorized to use a seal; and all courts of this State shall take judicial notice of the common seal of the City and of departmental seals.

SECTION 13. Every contract existing and unexecuted in whole or in part on the first day of January, 1926, made by any officer, board or department whose functions with respect to the subject-matter of such contract are transferred by this Act or shall be transferred as authorized hereby to any other officer, board or department, before the complete execution of such contract, shall be executed by the officer, board or department to which such functions are or shall be so transferred and nothing contained herein shall affect the obligation or enforceability of any contract.

SECTION 14. The Act known as the New York City Consolidation Act, being Chapter 410 of the Laws of 1882, and the acts amendatory thereof and supplemental thereto and the Greater New York Charter, as re-enacted by Chapter 466 of the Laws of 1901 and the Acts Amendatory thereof and supplemental thereto, and all other acts and parts of acts now in force relating to or affecting the City of New York or its government or affairs, in-so-far as any of the provisions of said Consolidation Act or the Greater New York Charter or of any such other acts are inconsistent with the provisions or manifest intent of this Act or in-so-far as the subject mat-

ter thereof is in substance re-enacted or covered by this Act are hereby repealed. Said Consolidation Act and the Greater New York Charter and any of said other acts or parts of acts, insofar as any of the provisions of any thereof shall be inconsistent with any action or resolution which may be taken or adopted by the Board of Estimate and Apportionment, or any action or resolution taken or adopted by the Board of Aldermen and the Board of Estimate and Apportionment, conjointly, or any ordinance which may be enacted by the Board of Aldermen, as authorized hereby, or insofar as the subject-matter thereof shall in substance be re-enacted or covered by any such action or resolution of the Board of Estimate and Apportionment or of said two boards, acting conjointly, or any such ordinance of the Board of Aldermen, as authorized hereby, shall be deemed to be repealed from and after the taking effect of such action or resolution of the Board of Estimate and Apportionment or of said two boards acting conjointly or of such ordinance of the Board of Aldermen, and thereafter the same, to the extent aforesaid, shall be without force. In-so-far as this Act is or such action or resolution of the Board of Estimate and Apportionment or of said two boards acting conjointly or such ordinance of the Board of Aldermen shall be the same in terms, substance or effect as said Consolidation Act or the Greater New York Charter or any other of the acts or parts of acts last mentioned or referred to or acts now in force relating to or affecting any of the municipalities or public bodies heretofore united or merged in The City of New York, this Act is intended to be and such action or resolution of the Board of Estimate and Apportionment or of said board and the Board of Aldermen, acting conjointly, or such ordinance of the Board of Aldermen, as the case may be, shall be deemed to be a continuation of such enactment and to apply the provisions thereof as modified hereby or thereby. No right or remedy shall be lost or impaired nor shall any action, proceeding or prosecution pending in any court or any act done or right or obligation accrued or penalty, forfeiture or punishment incurred prior to the time when this Act comes into force, whether the same depend for its virtue upon any laws repealed or modified hereby or otherwise, be abated or affected by reason of this Act. All

ordinances of the City of New York, all resolutions of the Board of Estimate and Apportionment and all departmental rules or regulations in force at the time this Act comes into force shall remain in force, except to the extent to which they shall conflict with the provisions or intent of this Act, until the same shall be repealed or modified by action of the board, boards or other authority having jurisdiction of the subject-matter thereof as provided herein.

SECTION 15. This Act shall take effect when it shall become law as provided in the Constitution of the State, but the question of the acceptance thereof by the City, although the same may have been accepted by act of the Mayor or without such acceptance shall again have been passed by the Legislature, shall be submitted to the electors of the City at the general election to occur in November, 1923, and this Act, except this Section, shall not come into force unless a majority of all of the votes cast by such electors in favor of and against the acceptance thereof shall be in favor of its acceptance. In the event of its acceptance by action of the electors of the City the entire Act, with the exception of Articles XXII, XXIV, XXVI and XXVII shall be in force on and after January 1, 1926. Said excepted Articles shall be in force on and from the following dates, respectively, viz.:

Article XXII, at midnight on the thirty-first day of March, 1926;

Article XXIV, from and after the acceptance of this Act by the electors of the City;

Article XXVI and Article XXVII at midnight on the thirty-first day of March, 1926, but only with respect to assessments made and taxes levied after said thirty-first day of March, 1926.

SECTION 16. This Act is a Public Act and judicial notice thereof shall be taken by all courts and in all places.

EXPLANATORY MEMORANDUM

To the New York Charter Commission:

The accompanying draft of a proposed Charter for the City of New York is offered as a suggestion capable of serving (alternatively) a three-fold use. It may be completed by the addition of the two articles remaining to be supplied and by such emendations as commend themselves to the Commission and then submitted to the Legislature as an instrument sufficiently self-contained to be susceptible of employment substantially as it stands; it may be extended and made comprehensive by the addition of articles defining the initial organization and functions of all of the necessary departments of the city government (Article XXIV being omitted); or it may be regarded merely as a model of clay to be remoulded by such alteration, elaboration or condensation as may suit the Commission's views, into a new and quite different instrument. In any event it is something to consider and work from toward the realization of the Commission's purpose. In its earlier provisions, it is largely an elaboration of the draft of Charter prepared by Mr. Comptroller Craig, of which the essential conception is retained. In other parts, it owes a considerable debt to the work of the so-called Ivin's Commission. Many of its provisions are succinct summarizations, with slight alterations, of sections of the existing Charter. Some of the provisions with respect to assessments for and the payment of taxes are adapted from a proposition of legislation prepared a few years ago by Mr. Lawson Purdy, for a long time President of the Board of Taxes and Assessments. The articles which deal with the proposed Department of Pensions and with the Department of Taxes are new but follow, in part, ideas suggested by Mr. Joseph Haag, who was Vice-President and Secretary of the late Municipal Pension Commission, and Mr. Lawson Purdy, respectively. As a whole, the proposed Charter has been framed in as broad outline and as succinctly as is compatible with the controlling purpose to produce an instrument, self-contained and within its purview self-executing.

Its primary purpose, other than simplification and increased elasticity, is the establishment of "home-rule" in the City of New York, practically in the same sense that the Constitution of the State permits the people of the State to govern themselves under that Constitution. That in the one case the people of the State may alter their Constitution and, in the other, the Charter may be altered only by the State legislature is a circumstance for which the State Constitution and not the Commission is responsible. Unqualified municipal home-rule will not be possible until it shall be authorized by an amendment of the State Constitution but, except for the fact that this draft of Charter provides for the exercise of certain city powers, and of certain state powers delegated to the City, by specified agencies (which nevertheless are city agencies), just as the State Constitution provides that various state powers shall be exercised by given agencies of the State, it provides, in fact as well as in name, for substantially complete municipal home-rule.

Doubtless it will be suggested that, as the Legislature admittedly is competent, even now, to delegate to the municipal legislative body, the power to provide for all administrative agencies and to define their functions, there is no sound reason for permitting the exercise of this power in many instances and denying it in a few. The question, however, seems to be one that must be decided upon grounds of expediency rather than of principle. Hardly any one would contend that it is not desirable, as things are, to create the offices and to define and firmly establish the powers of the Mayor, the Comptroller and the Board of Estimate and Apportionment. Yet to do so is not necessary except in a very limited number of instances. Similarly some of the members of the Commission have expressed, apparently with very definite conviction, the view that the proposed Charter should establish and provide for the maintenance, organization and management of certain city departments, notably the police department, upon which the welfare of the City is regarded as so dependent that they should not be left in any large degree at the mercy of transient social or political sentiment. Other departments like the City Treasury and the proposed Department of Pensions properly should be regarded as parts of the City's financial

structure and it seems, if its financial affairs are to be protected or regulated by the Charter at all, should be dealt with in it. That its financial affairs must so be dealt with is practically determined in advance by the provision of the State Constitution which requires the Legislature to restrict the City's "power of taxation, assessment, borrowing money, contracting debts" * * * "so as to prevent abuses in assessments and in contracting debt," the practical effect of which is to require the definition of the agencies through which money may be raised, appropriated and spent. The article on the budget and most of the provisions in the accompanying draft defining the powers of the Board of Estimate and Apportionment and the joint powers of that Board and the Board of Aldermen also fall into the same class. The powers in question are financial in nature or directly affect the exercise of such powers, are, therefore, practically speaking, coerced by the constitutional mandate quoted above and should be sufficiently specific and self-contained to be, in essentials and effect, self-executing.

The Constitutional mandate, from the standpoint of the desirability of assuring certainty of the powers to be exercised, accounts also for the Article dealing with the proposed Department of Taxes and the Article regulating the Assessment and Levy of Taxes as well as for the inclusion in the Charter scheme of an Article—not yet prepared—to deal with assessments for improvements and awards. The power of Eminent Domain theoretically is exercised directly by the Sovereign and is merely set in motion by the direct beneficiary. The Constitution of New York renders every proceeding for the condemnation of property a judicial process which must be provided for, up to a certain point, by the law of the State. Therefore it seems desirable in that case also, in order to avoid all question as to the sufficiency of the exercise of the power for the purposes of the City, that the procedure shall be outlined. It may be added that reasonable protection of the tax-payer and property-owner seems to demand that the general method of assessing for and levying taxes, the making of assessments for improvements and condemning land shall be prescribed by the State rather than by the City, which is of course the beneficiary of the powers to be exercised.

As to the Law Department, almost every lawyer will recognize the desirability that a department of the City government, which is charged, as it is, with the interpretation, enforcement and defense of the City's rights, almost as directly as are its legislative and financial authorities, shall be definitely established on an independent and effective footing.

Thus far, the present draft of Charter goes no further in principle than any proposal which contemplates definitions of the powers of the Comptroller or the Board of Estimate and Apportionment.

A little consideration will almost certainly lead any thoughtful person to the further conclusion that if any governmental agency is to be established and defined in the Charter, it is desirable to provide for its operations to the extent necessary to prevent the paralysis of its functions by negligent or hostile inaction on the part of other authorities. This is the principle that has been observed in determining the extent of detail to be incorporated in the several Charter articles now proposed.

The purpose of the provision empowering (but not requiring) the Board of Estimate and Apportionment, the Mayor consenting, to establish divisions in which departments may be grouped *but not consolidated* is to enable the Mayor to secure a more immediate and detailed supervision of the work of the several departments than he personally can give, to permit the correlation of work wherever two or more like departments are charged with similar duties or are subject to similar needs and to make it possible for the Mayor to command the assistance and advice of a few men of more than usual ability and information who might come to constitute a body analogous to a cabinet. An illustration (and an illustration merely) of such a possible grouping of departments, assuming the existence of those specified, would be:

1. City Treasury, Pensions and Licenses;
2. Police and Corrections;
3. Health, Hospitals and Public Welfare;
4. Fire, Buildings, Tenements and Markets;
5. Streets, Parks, Water, Gas and Electricity, and
Docks;
6. Plant and Structures and Public Works;

leaving as independent departments, in addition to the Comptroller's Office, the Law and Tax Departments, the Municipal Civil Service Commission and the Board of Education, if it is to be a city department at all. The provision, nevertheless, is wholly permissive and in practice might not prove to be of substantial value. In that event, it would be harmless surplusage.

Thus much concerning the reasons for incorporating in the draft of Charter the departmental and procedural provisions that are contained in it. The omission of provision for other departments, including one or two of the existing departments which are of very great importance, raises a more difficult question. In the draft now submitted such provisions have been omitted in deference to the opinion, indicated by views expressed in debate by several members of the Commission, that the establishment of city agencies with which the State is not directly concerned or which it is not by Constitutional mandate required to regulate, should be left, generally speaking at least, to the action of the municipal legislature—however that may be constituted. There is, however, room for grave doubt whether this is the most expedient method of dealing with the subject. While it may be conceded that the power to mould or remould agencies which are purely of local concern ought not to be withheld from the City, it is perhaps a sound view that the Legislature and the people of the City are entitled to the benefit of the considered advice of the Commission as to the agencies that it is desirable that the City shall employ and the powers with which they should be invested, respectively. The principle of procedure which would best meet this view probably is this:

(1) Enumerate and establish in the proposed Charter *all* of the principal departmental agencies which in the judgment of the Commission should be established, succinctly defining their functions and powers; (2) require certain fundamental agencies to be maintained with at least the functions thus assigned to them; (it is suggested that these should be the departments of police, pensions, and taxes, the Municipal Civil Service Commission and possibly the Health Department and that the City Treasury should be required either to be thus maintained or to be maintained

as a bureau of the Comptroller's office); (3) permit the City legislature to abolish, modify as to organization or powers, and to consolidate any of the other departments; (4) define the essential procedure of appropriation, the assessment, levy and review of taxes, assessment for improvements and of condemnations, but (5) leave the prescription of details or supplemental procedure, not necessary to give self-executing qualities to the primary procedure to the local legislature. If these principles should be adopted, the articles of the draft of Charter now submitted would, it is hoped, both minimize the work remaining to be performed and furnish a guide to the method to be employed in drafting the remaining articles.

A third method of dealing with the subject under discussion is to enumerate all of the departments which initially the City is to be required to maintain with an indication in very general terms of their intended functions and leave the definition of their powers and duties as well as the establishment of additional departments to the local legislature. An illustration of this method is found in the provisions of Section 2, Article XVII of the draft of Charter submitted herewith, requiring the City Treasury to maintain four specified bureaus. This method has the disadvantage of imposing an almost wholly undefined duty which may not be discharged in the manner or with the result intended and at the same time of depriving the local legislature, almost as effectively as any other method, of all opportunity for constructive initiative or choice. Probably, the Commission's election may best be made between the method adopted in the accompanying draft of Charter and the method recommended above.

While discussing the subject of the expedient method of dealing with administrative departments, a special explanation is due the Commission of the omission from this draft of Charter of all attempt to deal with the subject of education. The history of the subject seems to show an accelerating tendency on the part of the State to take into State control the administration of the entire educational system of the commonwealth, including the New York City schools. Before anything can profitably be accomplished by way of concrete treatment of the matter of education in the proposed Charter, or even collaterally, it will be necessary that the Commission

decide whether it is wise, in its opinion, (1) to surrender to this centralizing tendency, submitting to the separation of the Board of Education from the City and its erection into either an independent local body or a direct State agency taxes for its support being levied by the State (directly or indirectly) and the limit of taxation by the City for other purposes being thus enlarged, or (2) to insist upon its re-incorporation in the City's administrative scheme, the municipality re-taking the power to control its organization and activities and assuming entire responsibility for its support. At the moment, about 30% of the amount which the City raises by taxation is devoted to educational purposes, while it is relatively powerless to mould the system to its own conception of its needs. It would seem that a special committee, charged with the duty of conferring with persons particularly competent to advise upon this subject and of formulating a plan of dealing with it, might well be appointed by the Commission and the drafting of whatever provisions are to be incorporated in the Charter postponed pending the report of the Committee. Whatever the decision of the Commission upon the fundamental question above stated, it probably will be thought necessary either to incorporate in the Charter an article dealing comprehensively with the administration of the school-system or to submit to the Legislature proposed amendments of the Education Law.

The purpose at least to approximate a condition of Municipal home-rule is responsible for the inclusion of the provision for proportional representation. A number, possibly a majority, of the members of the Commission seem to hold the opinion that it would be distinctly unwise to confer broad and in large part unrestricted powers upon the municipal legislative agencies, unless some means can be devised to assure a more representative and responsible popular body than ordinarily is likely to be returned under the present electoral system. No one has been able thus far to suggest any other device intended to accomplish that end which seems as well adapted to the purpose in view as the system of proportional representation. It seems to be the opinion of those who have given mature consideration to the matter that proportional representation will assure, much better than the present system: (1) representation for any group of voters representing a school of political or economic

thought or having a common program which is so numerous that its views should be afforded an opportunity for expression in the determination of the policies of the community (*e.g.*, a group composed of from one-seventh to one-fifth of the electorate of a district, according to the size of the voting-population and the number of its representatives), a particularly desirable result in a large and un-homogeneous community such as the City of New York; (2) a *fair* representation for each group and no more; (3) selections of the best available candidates, chosen solely with relation to municipal issues, by minority groups, which in time must force like selections by the major parties; (4) hopeful candidacies sponsored by groups independent of the control of the "machine" politicians who ordinarily control established parties; (5) closer relations between a representative and those who have elected him, between whom in the case of a minority group no "organization" can intervene; (6) a vigilant and an active-minded criticism and a mature consideration of the measures proposed; (7) vastly increased public interest in the selection of members of the municipal legislature and in its debates and decisions; and, consequently, (8) a greater security against hastily conceived and possibly unconsidered, or perhaps one-sided, enactments which may imperil the City's welfare. Certainly, whatever else may be said in favor of or against the system, it is essentially democratic in principle and effect.

A legal opinion dealing with the question of the constitutionality—under the present State Constitution—of proportional representation will be submitted to the Commission either at the meeting at which this memorandum is presented or at the next subsequent meeting. The draft of Charter which is now submitted has been prepared upon the assumption—perhaps unwarranted—that the system (proportional representation) may be put into operation without the aid of any amendment of the Constitution. With the opinion above-promised will be submitted, if it seems to be called for, a draft of amendment of the Constitution for submission to the Legislature, if the Commission so determine, together with a section which the Commission, if it deem best, may add to Article VI in order to provide for the election of Aldermen pending the adoption by the Legislature and the people of the amendment in question.

As this subject unquestionably will receive earnest and thorough consideration by the Commission, it seems unnecessary further to discuss the considerations making for and against the adoption of the system, except to add that the division of the City into Aldermanic districts contained in the accompanying draft and the specification of the number and allocation of Aldermen are mere suggestions (illustrative of what the system presupposes), and that the subjects of districts and their representation, respectively, must of course be thoroughly investigated without regard to the provisions of the accompanying draft.

Aside from the subjects already discussed, perhaps the outstanding feature of the accompanying draft of charter is the adherence, in principle although not in detail, to the somewhat illogical but practically successful compromise between a bicameral and a unicameral system of legislative organization. Broadly speaking and with a sufficiently accurate approach to the truth, it may be said that the Board of Aldermen is made supreme in taxation and in ordinary matters of legislation, and that in practically all matters that are of a political complexion it either is supreme or has an equal voice with the Board of Estimate and Apportionment. The subjects over which a joint control by the two boards is proposed are: (1) the initiation of larger improvements (above \$500,000 in cost) except street improvements, (2) the authorization of stock and bond issues when the amount of the issue for a single purpose exceeds \$50,000,000, (3) the authorization—subject to a referendum—of the undertaking by the City of very large business enterprises, such as the operation of major public utilities (when the cost of plant exceeds \$50,000,000 or the gross annual expense, \$10,000,000), (4) the determination of the number and salaries of officers and employees for whom the City is to be responsible, (5) the making of the annual budget and (6) ultimate control of the pension system or systems. To the Board of Estimate and Apportionment are assigned: (a) control of administrative and financial affairs (such as (1) departmental organization, (2) the authorization of all ordinary stock and bond issues—of \$50,000,000 and less for a single purpose, (3) the immediate management of all city property and business undertakings, (4) the supervision of the waterfront, (5) street-

openings and (6) zoning arrangements), (b) the authorization of small improvements, (c) the actual control of proceedings preliminary to assessments and awards, (d) the granting of franchises, (e) the supervision of the use of streets and public places by public service corporations and (f), unless the subject has been taken over by the State or the Federal Government, the regulation of their rates and practices. It is provided that the Board of Estimate and Apportionment shall take over substantially all of the powers of the existing Board of Sinking Fund Commissioners and that that Board shall be abolished.

It is not pretended that this division of powers is strictly logical or even the best that can be devised, but it is roughly appropriate and one body is used as a check upon the other only where checks seem essential or where the normal powers of the two bodies seem to cross. Judged by the closely parallel experience of the past, the proposal seems to contain a promise of success.

Probably some direct reference should be made at this point to the checks imposed upon the exercise of the power to commit the City to great business undertakings and upon the power of the Board of Estimate and Apportionment to authorize the issue of obligations. It seems reasonable, considering the difficulties under which a municipality labors, practically, in the operation of public utilities and the opportunity for political abuse which is inherent in any such undertaking, that, before the City shall have the right to enter upon any such enterprise upon a very large scale, the consequences shall be ascertained as far as practicable and with a fair degree of impartiality; that there shall be ground for believing that they will not be disastrous; and that the citizens, who, after all, are the ones to gain or lose by the adoption of any such proposal, shall have an opportunity to confirm or veto the decision of the public authorities. For these reasons, the accompanying draft of Charter provides that before any business enterprise involving an investment of more than \$50,000,000 for a single purpose or estimated to require a gross annual expense of more than \$10,000,000 shall be entered upon, a disinterested and non-political commission shall determine, after investigation, that the proposed enterprise probably will be self-supporting, taking its entire life

into consideration, that both the Board of Estimate and Apportionment and the Board of Aldermen shall determine that the proposal is wise and that their action shall be approved by a majority of such part of the electorate as may be sufficiently interested to cast their votes for or against the proposition. With respect to enterprises of less magnitude, it is provided that the ability of the enterprise to be self-sustaining shall be determined by engineers of, or appointed by, the Board of Estimate and Apportionment and that the project shall be authorized by concurrent action of that board and the Board of Aldermen. An attempt, also, to assure the financial soundness of enterprises undertaken by the City, after they come into operation, will be found in Section 2 of Article X, which directs the Board of Estimate and Apportionment to adjust rates and prices in such manner as (if possible) to avoid deficits, requires the establishment of a reserve fund in each case and gives taxpayers and creditors the right to enforce the performance of its duties by the Board.

Aside from the wisdom of proceeding cautiously in matters of such moment, it is well to remember that the operation in a city like New York of great public utilities (other than a water-system) would be a rather pronounced departure from any practice thus far satisfactorily demonstrated by experience to be justified and that it can hardly be supposed that a Charter provision conferring power to embark on such an enterprise will prove readily acceptable either to the Legislature or to the taxpayers of the City unless so safeguarded as fairly to assure the City against abuse or mistake in its exercise.

Presumably, a single stock or bond issue of more than \$50,000,000 ordinarily will be made only in connection with the establishment of some great public facility, but this is not certain nor does it follow that the operation of the facility by the public will be proposed. A referendum in cases in which such operation is not involved seems quite unnecessary, particularly in view of the limited purposes for which long-time stock and bond issues may be made; but, upon the other hand, it seems only wise that in instances of such magnitude the judgment of the Board of Estimate and Apportionment shall be confirmed at least by the willingness of the

popular body—the Board of Aldermen—to acquiesce. It is so provided in the draft of Charter now submitted.

With the subject just discussed, the provisions with respect to the power to issue corporate stock and bonds are naturally connected. An endeavor—not very radical—to give some additional support to the City's credit has been made. The noticeable features of the provisions in question are these:

1. Aside from school and assessment issues and issues for other purposes already authorized, corporate stock and bonds can be issued only for revenue producing improvements which are estimated to be capable of being self-supporting and of amortizing their cost within their assumed life-terms and in any case within fifty years. The issue of bonds in any such case is permitted to the principal amount upon which the earnings which, it is estimated, will remain available for interest will suffice to pay interest at the rate proposed. The effect of this is to apply to the creation of such debts generally the same rule, in principle, which must now be applied if the debt is not to be included within the 10 per cent debt limit. It is needless to say that the mere requirement which now exists that an improvement shall have a substantial, present or prospective "revenue-producing" capacity in order to warrant the creation of debt for its construction is, as a safeguard, wholly illusory.

2. All bond issues are required to be serial and complete amortization of every stock or bond issue must be achieved within the life of the issue in practicable annual installments.

3. No General Fund bonds nor any other obligations of the City are to be purchased by or used to replace other investments or cash in any sinking-fund unless there remain in the fund sound investments (other than city obligations) and cash sufficient with interest to accrue to provide for the obligations for which the fund affords security, including both principal and interest thereon to maturity.

4. No maturing debt is to be refunded except such as might be originally created at the time of refunding.

5. Short-term obligations, if not redeemed out of the proceeds of tax-levies made for the purpose are to be provided for again in the first succeeding tax-levy, so that there shall

be no accumulation of short-dated debt even though tax-deficits may exist and recur.

6. A first tax-payment of one per cent. of the tax assessments is required to be made, beginning in 1927, on the second day of January; the balance becomes due May first but payment in either case may be postponed for four months by paying interest at the rate of six per cent. per annum; thereafter defaulted taxes are to bear interest at the rate of twelve per cent. per annum. This arrangement, if adopted, should obviate in large part the necessity of issuing revenue bonds and as compared with the present arrangement should mean an annual saving in interest (paid and received) of several million dollars. Such provision is made that the Board of Aldermen, in its discretion, may reasonably classify taxable property and may provide for its assessment upon differing bases of valuation or for its taxation at different rates.

It is proposed to abolish the Board of Taxes and Assessments and that its functions shall be discharged by a Commissioner, to be the administrative head of the Department of Taxes and a number of non-permanent tax-boards, to be appointed by the Commissioner, as needed, from the entire number of deputy tax-commissioners of which the commissioner and his Assistant Commissioner, also, may be members.

It is also proposed to establish a Board of Review by which all applications to review decisions of tax-boards must be heard in the first instance and from whose orders, made upon formal applications, appeals will lie to the Appellate Division of the Supreme Court for the First Department. Provision is made, also, for informal applications to this Board but without right of appeal from orders made thereon. *Certiorari* in tax matters is abolished.

It is expressly provided that all forms of public improvements, except public buildings and self-supporting improvements, may be provided for, in whole or in part, if the conditions justify such course, by the assessment of private property especially benefitted thereby. It is believed that much of the recent financial embarrassment of the City might have been avoided had resort been had to this method of raising funds for construction of the existing subways and that to have done so need not have deprived the owners of property assessed of any part of the pre-existing value of their holdings.

Provision is made for a single agency to administer, investigate and report upon pension and retirement funds, through which, it frequently has been asserted, a very great and only partially appreciated city obligation is gradually accumulating. The Board of Pension Fund Trustees, which is proposed, is to be composed of city officials, three of whom are already directly interested in the management and protection of existing funds. The remaining members of the Board are to be the most responsible among the possible representatives of the City. Pending a possible consolidation of all pension systems (which is authorized to be made by joint action of the Board of Aldermen and the Board of Estimate and Apportionment), the existing funds are to be kept distinct but not extended. Provision is made against the impairment of accrued benefits but it is made possible to establish all funds, separately as divisions of an entire system or as a single fund, upon an actuarial basis which will assure the City against the future discovery of obligations that may not have been provided for. Retirements which entitle the persons retired to pensions or like benefits are to be made by the Board of Pension Fund Trustees. The beneficiaries of the various funds, actual and contingent, are afforded wide supervisory privileges, to be exercised through the medium of an Advisory Committee.

In making up the annual budget, the Board of Estimate and Apportionment, in effect, is left with full discretion as to all except contractual and quasi-contractual obligations, except that provision must be made for the state courts and boards which in substance serve only the City or one or more of its subdivisions.

In the belief that the new tax system proposed should greatly expedite the collection of taxes and that an arbitrary rule for establishing the practical impossibility of collecting defaulted taxes and assessments for budget purposes should be laid down, it is also provided that *all* taxes and assessments in default for more than three years shall be deemed "uncollectible" and that provision for an equal revenue be made in the next ensuing budget. The period of three years thus prescribed has been selected because tax-liens are subject to sale after three years and it has been assumed that this period will not be extended.

The initiative of the Board of Aldermen in the formulation of the budget is greatly increased but its action thereon is subject to the approval of the Board of Estimate and Apportionment to be given within a limited period.

Each of the Borough Presidents is required to appoint a Commissioner of Public Works who is authorized to exercise all of the administrative powers of the Borough President, irrespective of the latter's absence or disability. It is believed that the power of the Board of Aldermen over the budget together with this provision for Commissioners of Public Works, who should quickly become the immediate executive heads of the Borough Presidents' offices, should be regarded as a sufficient answer to the criticism that the power that spends is the power that appropriates. As a matter of fact, the system, in practical effect, does not differ from the British governmental system under which taxation, appropriation and expenditure are all controlled by Ministers, subject only to the necessity of obtaining the approval of the House of Commons.

Attention should be called to a number of minor features of the accompanying draft:

1. It is provided that the proposed Charter shall become operative, generally, on January 1, 1926. No emergency seems to exist which necessitates interference with the existing city administration and, if proportional representation is to be resorted to, it is doubtful whether the system can be established, free from danger of attack, before an even later date. The proposed modified tax system is not to come into force until after the completion of the tax levy in March, 1926, and is not to affect matters arising in connection with that levy or assessments preliminary thereto.

2. The City is empowered to engage (under the safeguards provided) not only in the operation of public utilities but in the production or distribution—or both—of articles of common necessity, *e.g.*, ice, milk, etc.

3. The City Treasury is erected into a separate department with the Chamberlain as its head, but the Comptroller is given extensive power to prescribe rules which must be observed in the administration of its affairs.

4. The Mayor's consent to the erection and consolidation of or changes in the functions of departments is required.

5. The Board of Water Supply is not abolished but the Board of Estimate and Apportionment is empowered (a) to leave it in existence, (b) to consolidate it with the department charged with the control of water distribution in the City, or (c) to convert it into a department of the City government.

6. The powers of the Board of Estimate and Apportionment as to zoning are defined and limited in general terms but the specific details of procedure, other than by the Board itself, are left to its determination.

7. No provision is made for the removal of any city officer, except the Police Commissioner, by any State authority.

8. Provision is made for an interim organization of departments not specifically established in the proposed Charter through the medium of action by the present Board of Estimate and Apportionment (See Article XXIV), but no provision is made for any interim action by the Board of Aldermen with respect to matters over which that Board will possess jurisdiction after January 1, 1926.

9. In an ordinary case of codification, the repealer clause incorporated in this draft would probably be sufficient and the wisest form of effecting the necessary modification of existing laws. But in this case, where the purpose is to eliminate, to the utmost extent possible, the mandatory effect of existing legislation, and particularly since most of it may be superseded by future action of the city legislature, a very careful examination of the existing Charter, the Consolidation Act and all statutes now in force which affect the City should be made to determine whether the specific repeal of acts which might not be affected by the repeal clause proposed is not desirable. Perhaps such an examination could best be made in the office of the Corporation Counsel after the substance of the Charter to be recommended has been determined by the Commission. The results of such a survey, after scrutiny upon the part of the Commission, might, if necessary, be transmitted to the Legislature in a supplemental report.

There are a number of questions which have been suggested for the consideration of the Commission which are not directly raised by the draft of Charter now submitted. Some of the more important are the following:

1. Shall the Commission propose to the Legislature a "home-rule" amendment of the Constitution, and, if so, shall it be plenary or merely permit legislative enactment of a home-rule enabling act? Shall the Commission endorse the Tolbert "Home-Rule Amendment"?

2. Shall the Commission propose an amendment of the Constitution declaring that all laws, however formulated, which in fact affect, when enacted, only the City of New York or only a county or counties wholly within the City, shall be deemed special City laws?

3. Should the City and its constituent counties be consolidated? (The accompanying draft probably goes as far in this direction as is possible without an amendment of the Constitution.) If not, shall the consolidation into one county of the five counties now comprised in the City be recommended? (Such a measure would probably not be popular, although it might produce economies.)

4. Shall the Commission propose an amendment of the Constitution prohibiting the enactment by the Legislature of mandatory financial legislation affecting the City?

5. Shall the Board of Estimate and Apportionment be reorganized by excluding therefrom executive officers of the City and providing that it shall be composed of persons elected solely to membership in that body? (For the purposes of the draft of charter now submitted, counsel has rejected this suggestion. The existing organization of that Board seems to have been so satisfactory that any attempt to alter it would, it appears to counsel, be difficult to justify.)

6. Should the administrative autonomy of the Boroughs be abolished, wholly or in part, through the distribution of all or some of the administrative powers of the Borough Presidents among appropriate city departments? In particular, should a city-wide control of (a) engineering and construction, (b) streets and sewers, and (c) buildings, be insisted on? All this is made possible but not compulsory in the accompanying draft.

7. Shall a unified department of hospitals be made compulsory?

8. Shall the abolition of various minor and relatively superfluous offices and agencies (including a number which are maintained by the counties) be made imperative?

The foregoing is by no means an exhaustive list of the many important questions, other than those which are directly suggested by the accompanying draft of Charter, which will demand consideration, if not solution, at the hands of the Commission.

In conclusion, a considerable indulgence is bespoken for the work now submitted. It doubtless contains errors and incongruities and probably important omissions other than those to which attention has been called will be discovered. Some of its provisions may be shown by the criticism which is to be expected, and indeed invited, to be impracticable or inexpedient. Nothing is claimed for it more than that it affords a point of departure from which the work of the commission can develop and progress.

Respectfully submitted,

F. W. M. CUTCHEON,
Counsel.

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